

FIRST REGULAR SESSION

# HOUSE BILL NO. 124

## 92ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE WARD.

Pre-filed December 30, 2002, and copies ordered printed.

TED WEDEL, Chief Clerk

0795L.011

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### AN ACT

To repeal sections 381.003, 381.009, 381.015, 381.018, 381.022, 381.025, 381.028, 381.032, 381.035, 381.038, 381.042, 381.045, 381.048, 381.052, 381.055, 381.058, 381.062, 381.065, 381.068, 381.071, 381.072, 381.075, 381.078, 381.085, 381.088, 381.092, 381.095, 381.098, 381.102, 381.105, 381.108, 381.112, 381.115, 381.118, 381.122, 381.125, 381.410 and 381.412, RSMo, and to enact in lieu thereof thirty-eight new sections relating to title insurance.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 381.003, 381.009, 381.015, 381.018, 381.022, 381.025, 381.028, 381.032, 381.035, 381.038, 381.042, 381.045, 381.048, 381.052, 381.055, 381.058, 381.062, 381.065, 381.068, 381.071, 381.072, 381.075, 381.078, 381.085, 381.088, 381.092, 381.095, 381.098, 381.102, 381.105, 381.108, 381.112, 381.115, 381.118, 381.122, 381.125, 381.410 and 381.412, RSMo, are repealed and thirty-eight new sections enacted in lieu thereof, to be known as sections 381.003, 381.009, 381.015, 381.018, 381.022, 381.025, 381.028, 381.032, 381.035, 381.038, 381.042, 381.045, 381.048, 381.052, 381.055, 381.058, 381.062, 381.065, 381.068, 381.071, 381.072, 381.075, 381.078, 381.085, 381.088, 381.092, 381.095, 381.098, 381.102, 381.105, 381.108, 381.112, 381.115, 381.118, 381.122, 381.125, 381.410 and 381.412, to read as follows:

**381.003. 1. Sections 381.003 to 381.125 shall be known and may be cited as the "Missouri Title Insurance Act".**

**2. Sections 381.009 to 381.048 shall apply to all persons engaged in the business of title insurance in this state. Sections 381.052 to 381.112 shall apply to all title insurers**

**EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

5 engaged in the business of title insurance in this state. Sections 381.115 to 381.125 shall  
6 apply to all title agencies engaged in the business of title insurance in this state.

7 3. Except as otherwise expressly provided in this chapter and except where the  
8 context otherwise requires, all provisions of the insurance code applying to insurance and  
9 insurance companies generally shall apply to title insurance, title insurers and title agents.

381.009. As used in this chapter, the following terms mean:

2 (1) "Abstract of title" or "abstract", a written history, synopsis or summary of the  
3 recorded instruments affecting the title to real property;

4 (2) "Affiliate", a specific person that directly, or indirectly through one or more  
5 intermediaries, controls, or is controlled by, or is under common control with, the person  
6 specified;

7 (3) "Affiliated business", any portion of a title insurance agency's business written  
8 in this state that was referred to it by a producer of title insurance business or by an  
9 associate of the producer, where the producer or associate, or both, have a financial  
10 interest in the title agency;

11 (4) "Associate", any:

12 (a) Business organized for profit in which a producer of title business is a director,  
13 officer, partner, employee or an owner of a financial interest;

14 (b) Employee of a producer of title business;

15 (c) Franchisor or franchisee of a producer of title business;

16 (d) Spouse, parent or child of a producer of title insurance business who is a  
17 natural person;

18 (e) Person, other than a natural person, that controls, is controlled by, or is under  
19 common control with, a producer of title business;

20 (f) Person with whom a producer of title insurance business or any associate of the  
21 producer has an agreement, arrangement or understanding, or pursues a course of  
22 conduct, the purpose or effect of which is to provide financial benefits to that producer or  
23 associate for the referral of business;

24 (5) "Bona fide employee of the title insurer", an individual who devotes  
25 substantially all of his or her time to performing services on behalf of a title insurer and  
26 whose compensation for those services is in the form of salary or its equivalent paid by the  
27 title insurer;

28 (6) "Control", including the terms "controlling", "controlled by" and "under  
29 common control with", the possession, direct or indirect, of the power to direct or cause  
30 the direction of the management and policies of a person, whether through the ownership  
31 of voting securities, by contract other than a commercial contract for goods or

32 nonmanagement services, or otherwise, unless the power is the result of an official position  
33 or corporate office held by the person. Control shall be presumed to exist if a person,  
34 directly or indirectly, owns, controls, holds with the power to vote or holds proxies  
35 representing ten percent or more of the voting securities of another person. This  
36 presumption may be rebutted by showing that control does not exist in fact. The director  
37 may determine, after furnishing all persons in interest notice and opportunity to be heard  
38 and making specific findings of fact to support the determination, that control exists in  
39 fact, notwithstanding the absence of a presumption to that effect;

40 (7) "County" or "counties" includes any city not within a county;

41 (8) "Direct operations", that portion of a title insurer's operations which are  
42 attributable to business written by a bona fide employee;

43 (9) "Director", the director of the department of insurance, or the director's  
44 representatives;

45 (10) "Escrow", written instruments, money or other items deposited by one party  
46 with a depository, escrow agent or escrowee for delivery to another party upon the  
47 performance of a specified condition or the happening of a certain event;

48 (11) "Escrow, settlement or closing fee", the consideration for supervising or  
49 handling the actual execution, delivery or recording of transfer and lien documents and  
50 for disbursing funds;

51 (12) "Financial interest", a direct or indirect legal or beneficial interest, where the  
52 holder is or will be entitled to five percent or more of the net profits or net worth of the  
53 entity in which the interest is held;

54 (13) "Foreign title insurer", any title insurer incorporated or organized pursuant  
55 to the laws of any other state of the United States, the District of Columbia, or any other  
56 jurisdiction of the United States;

57 (14) "Geographically indexed or retrievable", a system of keeping recorded  
58 documents which includes as a component a method for discovery of the documents by:

59 (a) Searching an index arranged according to the description of the affected land;

60 or

61 (b) An electronic search by description of the affected land;

62 (15) "Net retained liability", the total liability retained by a title insurer for a single  
63 risk, after taking into account any ceded liability and collateral, acceptable to the director,  
64 and maintained by the insurer;

65 (16) "Non-United States title insurer", any title insurer incorporated or organized  
66 pursuant to the laws of any foreign nation or any province or territory;

67 (17) "Premium", the consideration paid by or on behalf of the insured for the

68 issuance of a title insurance policy or any endorsement or special coverage. It does not  
69 include consideration paid for settlement or escrow services or noninsurance-related  
70 information services;

71 (18) "Producer", any person, including any officer, director or owner of five  
72 percent or more of the equity or capital of any person, engaged in this state in the trade,  
73 business, occupation or profession of:

74 (a) Buying or selling interests in real property;

75 (b) Making loans secured by interests in real property; or

76 (c) Acting as broker, agent, representative or attorney of a person who buys or sells  
77 any interest in real property or who lends or borrows money with the interest as security;

78 (19) "Qualified depository institution", an institution that is:

79 (a) Organized or, in the case of a United States branch or agency office of a foreign  
80 banking organization, licensed pursuant to the laws of the United States or any state and  
81 has been granted authority to operate with fiduciary powers;

82 (b) Regulated, supervised and examined by federal or state authorities having  
83 regulatory authority over banks and trust companies;

84 (c) Insured by the appropriate federal entity; and

85 (d) Qualified under any additional rules established by the director;

86 (20) "Referral", the directing or the exercising of any power or influence over the  
87 direction of title insurance business, whether or not the consent or approval of any other  
88 person is sought or obtained with respect to the referral;

89 (21) "Search", "search of the public records" or "search of title", a search of those  
90 records established by the laws of this state for the purpose of imparting constructive  
91 notice of matters relating to real property to purchasers for value and without knowledge;

92 (22) "Security" or "security deposit", funds or other property received by the title  
93 insurer as collateral to secure an indemnitor's obligation under an indemnity agreement  
94 pursuant to which the insurer is granted a perfected security interest in the collateral in  
95 exchange for agreeing to provide coverage in a title insurance policy for a specific title  
96 exception to coverage;

97 (23) "Subsidiary", an affiliate controlled by a person directly or indirectly through  
98 one or more intermediaries;

99 (24) "Title agency" means an authorized person who issues title insurance on  
100 behalf of a title insurer. An attorney licensed to practice law in this state who issues title  
101 insurance as a part of his or her law practice, but does not maintain or operate a title  
102 insurance business separate from such law practice is not a title agency;

103 (25) "Title agent" or "agent", an attorney licensed to practice law in this state who

104 issues title insurance as part of his or her law practice, but who is not affiliated with or  
105 acting on behalf of a title agency, or an authorized person who, on behalf of a title agency  
106 or on behalf of a title agent not affiliated with a title agency, performs one or more of the  
107 following acts in conjunction with the issuance of a title insurance commitment or policy:

- 108 (a) Determines insurability, based upon a review of a search of title;
- 109 (b) Performs searches;
- 110 (c) Handles escrows, settlements or closings; or
- 111 (d) Solicits or negotiates title insurance business;
- 112 (26) "Title insurance business" or "business of title insurance":
  - 113 (a) Issuing as insurer or offering to issue as insurer a title insurance policy;
  - 114 (b) Transacting or proposing to transact by a title insurer any of the following  
115 activities when conducted or performed in contemplation of and in conjunction with the  
116 issuance of a title insurance policy:
    - 117 a. Soliciting or negotiating the issuance of a title insurance policy;
    - 118 b. Guaranteeing, warranting or otherwise insuring the correctness of title searches  
119 for all instruments affecting titles to real property, any interest in real property,  
120 cooperative units and proprietary leases and for all liens or charges affecting the same;
    - 121 c. Handling of escrows, settlements or closings;
    - 122 d. Executing title insurance policies;
    - 123 e. Effecting contracts of reinsurance; or
    - 124 f. Abstracting, searching or examining titles;
  - 125 (c) Guaranteeing, warranting or insuring searches or examinations of title to real  
126 property or any interest in real property;
  - 127 (d) Guaranteeing or warranting the status of title as to ownership of or liens on real  
128 property by any person other than the principals to the transaction;
  - 129 (e) Promising to purchase or repurchase for consideration an indebtedness because  
130 of a title defect, whether or not involving a transfer of risk to a third person; or
  - 131 (f) Promising to indemnify the holder of a mortgage or deed of trust against loss  
132 from the failure of the borrower to pay the mortgage or deed of trust when due if the  
133 property fails to yield sufficient proceeds upon foreclosure to satisfy the debt, when one or  
134 both of the following conditions exist:
    - 135 a. The security has been impaired by the discovery of a previously unknown  
136 property interest in favor of one who is not liable for the payment of the mortgage or deed  
137 of trust; or
    - 138 b. Perfection of the position of the mortgage or deed of trust which was assured to  
139 exist cannot be obtained, notwithstanding timely recordation with the recorder of deeds

140 of the county in which the property is located; or

141 (g) Doing or proposing to do any business substantially equivalent to any of the  
142 activities listed in this subdivision in a manner designed to evade the provisions of this  
143 chapter;

144 (27) "Title insurance commitment" or "commitment", a preliminary report,  
145 commitment or binder issued prior to the issuance of a title insurance policy containing the  
146 terms, conditions, exceptions and other matters incorporated by reference under which the  
147 title insurer is willing to issue its title insurance policy. A title insurance commitment is not  
148 an abstract of title;

149 (28) "Title insurance policy" or "policy", a contract insuring or indemnifying  
150 owners of, or other persons lawfully interested in, real property or any interest in real  
151 property, against loss or damage arising from any or all of the following conditions existing  
152 on or before the policy date and not excepted or excluded:

153 (a) Title to the estate or interest in land being otherwise than as stated in the policy;

154 (b) Defects in or liens or encumbrances on the insured title;

155 (c) Unmarketability of the insured title;

156 (d) Lack of legal right of access to the land;

157 (e) Invalidity or unenforceability of the lien of an insured mortgage;

158 (f) The priority of a lien or encumbrance over the lien of any insured mortgage;

159 (g) The lack of priority of the lien of an insured mortgage over a statutory lien for  
160 services, labor or material;

161 (h) The invalidity or unenforceability of an assignment of the insured mortgage;  
162 or

163 (i) Rights or claims relating to the use of or title to the land;

164 (29) "Title insurer" or "insurer", a company organized pursuant to laws of this  
165 state for the purpose of transacting the business of title insurance and any foreign or  
166 non-United States title insurer licensed in this state to transact the business of title  
167 insurance;

168 (30) "Title plant", a set of records encompassing at least the most recent forty-five  
169 years, consisting of documents, maps, surveys or entries affecting title to real property or  
170 any interest in or encumbrance on the property, which have been filed or recorded in the  
171 jurisdiction for which the title plant is established or maintained. The records in the title  
172 plant shall be geographically indexed or retrievable as to those records containing a legal  
173 description of affected land, and otherwise by name of affected person;

174 (31) "Underwrite", the authority to accept or reject risk on behalf of the title  
175 insurer.

**381.015. 1. When a title insurance commitment issued by a title insurer, title agency or title agent includes an offer to issue an owner's policy covering the resale of owner-occupied residential property, the commitment shall incorporate the following statement in bold type:**

**"Please read the exceptions and the terms shown or referred to herein carefully. The exceptions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered."**

**2. A title insurer, title agency or title agent issuing a lender's title insurance policy in conjunction with a mortgage loan made simultaneously with the purchase of all or part of the real estate securing the loan, where no owner's title insurance policy has been requested, shall give written notice, on a form prescribed or approved by the director, to the purchaser-mortgagor at the time the commitment is prepared. The notice shall explain that a lender's title insurance policy is to be issued protecting the mortgage-lender, and that the policy does not provide title insurance protection to the purchaser-mortgagor as the owner of the property being purchased. The notice shall explain what a title policy insures against and what possible exposures exist for the purchaser- mortgagor that could be insured against through the purchase of an owner's policy. The notice shall also explain that the purchaser-mortgagor may obtain an owner's title insurance policy protecting the property owner at a specified cost or approximate cost, if the proposed coverages are or amount of insurance is not then known. A copy of the notice, signed by the purchaser-mortgagor, shall be retained in the relevant underwriting file at least fifteen years after the effective date of the policy.**

**3. Each violation of any provision of this section is a class C violation as that term is defined in section 381.045.**

**381.018. 1. The title insurer shall not allow the issuance of its commitments or policies by a title agency or title agent not affiliated with a title agency unless there is in force a written contract between the parties which sets forth the responsibilities of each party or, where both parties share responsibility for particular functions, specifies the division of responsibilities.**

**2. For each title agency or title agent not affiliated with a title agency under contract with the insurer, the title insurer shall have on file a statement of financial condition, of each title agency or title agent as of the end of the previous calendar or fiscal year setting forth an income statement of business done during the preceding year and a balance sheet showing the condition of its affairs as of the close of the prior year, certified by the agency or agent as being a true and accurate representation of the agency's or agent's financial condition. The statement shall be filed with the insurer no later than the**

13 date the agency's or agent's federal income tax return for the same year is filed. Attorneys  
14 actively engaged in the practice of law, in addition to that related to title insurance  
15 business, are exempt from the requirements of this subsection.

16 3. The title insurer shall conduct reviews of the underwriting, claims and escrow  
17 practices of its agencies and agents which shall include a review of the agency's or agent's  
18 policy blank inventory and processing operations. If any such title agency or title agent  
19 does not maintain separate bank or trust accounts for each title insurer it represents, the  
20 title insurer shall verify that the funds held on its behalf are reasonably ascertainable from  
21 the books of account and records of the title agency or title agent not affiliated with a title  
22 agency. The title insurer shall conduct a review of each of its agencies and agents at least  
23 triennially commencing January first of the year first following January 1, 2004.

24 4. Within thirty days of executing or terminating a contract with a title agency or  
25 title agent not affiliated with a title agency, the insurer shall provide notification of the  
26 appointment or termination and the reason for termination to the director. Notices of  
27 appointment of a title agency or title agent shall be made on a form promulgated by the  
28 director.

29 5. The title insurer shall maintain an inventory of all policy numbers allocated to  
30 each title agency or title agent not affiliated with a title agency.

31 6. The title insurer shall have on file proof that the title agency or title agent is  
32 licensed by this state.

33 7. The title insurer shall establish the underwriting guidelines and, where  
34 applicable, limitations on title claims settlement authority to be incorporated into contracts  
35 with its title agencies and title agents not affiliated with a title agency.

36 8. Each violation of any provision of this section is a class B violation as that term  
37 is defined in section 381.045.

381.022. 1. A title insurer, title agency or title agent not affiliated with a title  
2 agency may operate as an escrow, security, settlement or closing agent, provided that:

3 (1) All funds deposited with the title insurer, title agency or title agent not affiliated  
4 with a title agency in connection with any escrow, settlement, closing or security deposit  
5 shall be submitted for collection to or deposited in a separate fiduciary trust account or  
6 accounts in a qualified depository institution no later than the close of the next business  
7 day after receipt, in accordance with the following requirements:

8 (a) The funds shall be the property of the person or persons entitled to them under  
9 the provisions of the escrow, settlement, security deposit or closing agreement and shall be  
10 segregated for each depository by escrow, settlement, security deposit or closing in the  
11 records of the title insurer, title agency or title agent not affiliated with a title agency, in



12 a manner that permits the funds to be identified on an individual basis and in accordance  
13 with the terms of the individual instructions or agreements under which the funds were  
14 accepted; and

15 (b) The funds shall be applied only in accordance with the terms of the individual  
16 instructions or agreements under which the funds were accepted;

17 (2) Funds held in an escrow account shall be disbursed only pursuant to a written  
18 instruction or agreement specifying under what conditions and to whom such funds may  
19 be disbursed or pursuant to an order of a court of competent jurisdiction;

20 (3) Funds held in a security deposit account shall be disbursed only pursuant to a  
21 written agreement specifying:

22 (a) What actions the indemnitor shall take to satisfy his or her obligation under the  
23 agreement;

24 (b) The duties of the title insurer, title agency or title agent not affiliated with a title  
25 agency with respect to disposition of the funds held, including a requirement to maintain  
26 evidence of the disposition of the title exception before any balance may be paid over to the  
27 depositing party or his or her designee; and

28 (c) Any other provisions the director may require;

29 (4) Any interest received on funds deposited in connection with any escrow,  
30 settlement, security deposit or closing may be retained by the title insurer, title agency or  
31 title agent not affiliated with a title agency as compensation for administration of the  
32 escrow or security deposit, unless the instructions for the funds or a governing statute  
33 provides otherwise;

34 (5) Each violation of this subsection is a class A violation as that term is defined in  
35 section 381.045.

36 2. The title agency or title agent not affiliated with an agency shall cooperate with  
37 its underwriters in the conduct by the underwriters of reviews of the agency's or agent's  
38 escrow, settlement, closing and security deposit accounts. The title insurer shall provide  
39 a copy of the report of each such review it performs to the director. The director may  
40 promulgate rules setting forth the minimum threshold level at which a review would be  
41 required, the standards thereof and the form of report required.

42 3. If the title agency or title agent not affiliated with an agency is appointed by two  
43 or more title insurers and maintains fiduciary trust accounts in connection with providing  
44 escrow or closing settlement services, the title agency or title agent shall allow each title  
45 insurer reasonable access to the accounts and any or all of the supporting account  
46 information in order to ascertain the safety and security of the funds held by the title  
47 agency or title agent.

48           **4. (1) Nothing in this chapter shall be deemed to prohibit the recording of**  
49 **documents prior to the time funds are available for disbursement with respect to a**  
50 **transaction in which a title insurer, title agency or title agent not affiliated with a title**  
51 **agency is the settlement agent, provided all parties to whom payment will become due upon**  
52 **such recording consent thereto in writing.**

53           **(2) The settlement agent shall record all deeds and security instruments for real**  
54 **estate closings handled by it within three business days after completion of all conditions**  
55 **precedent thereto.**

56           **(3) Each violation of this subsection is a class C violation as that term is defined in**  
57 **section 381.045.**

**381.025. 1. A title insurer, title agency, title agent or other person shall not give or**  
2 **receive, directly or indirectly, any consideration for the referral of title insurance business**  
3 **or escrow or other service provided by a title insurer, title agency or title agent. Each**  
4 **violation of this subsection is a class A violation as that term is defined in section 381.045.**

5           **2. Any title insurer, title agency or title agent doing business in the same county as**  
6 **a title insurer, title agency or title agent who may be in violation of the prohibitions or**  
7 **limitations of this section shall have standing to seek injunctive relief against the violating**  
8 **title insurer, title agency or title agent in the event the department declines or fails to**  
9 **enforce this section within forty-five days following receipt of written notice of such**  
10 **violation. In any action pursuant to this subsection, the court may award to the successful**  
11 **party the court costs of the action together with reasonable attorney fees.**

**381.028. No title insurer, title agency or title agent shall participate in any**  
2 **transaction in which it knows that a producer or other person requires, directly or**  
3 **indirectly, or through any trustee, director, officer, agent, employee or affiliate, as a**  
4 **condition, agreement or understanding to selling or furnishing any other person a loan, or**  
5 **loan extension, credit, sale, property, contract, lease or service, that the other person shall**  
6 **place a title insurance policy of any kind with the title insurer or through a particular title**  
7 **agency or agent. Each violation of this section is a class A violation as that term is defined**  
8 **in section 381.045.**

**381.032. 1. No title insurer, may charge any rates regulated by the state after**  
2 **January 1, 2004, except in accordance with the premium rate schedule and manual filed**  
3 **with and approved by the director in accordance with applicable statutes and regulations**  
4 **governing rate filings. Premium rate schedules in effect prior to January 1, 2004, may be**  
5 **used until new rate schedules have been approved by the director. Title insurers shall file**  
6 **their premium rate schedules within thirty days after January 1, 2004. Each violation of**  
7 **this subsection is a class C violation as that term is defined in section 381.045. Nothing in**

8 this section shall prevent an agent not affiliated with an agency from charging for services  
9 that constitute the practice of law at the customary fee charged by such person for legal  
10 services. To the extent the premium fails to compensate the agent at such rate, the agent  
11 may render an additional bill for such services on behalf of the agent's law practice or law  
12 firm. The acceptance of any part of the premium by the law firm of said agent shall not  
13 be a violation of any provision of the Missouri title insurance act or the general insurance  
14 statutes, regulations or bulletins regarding payment of commissions to nonlicensed entities.

15 2. The director may establish rules, including rules providing statistical plans, for  
16 use by all title insurers, title agencies and title agents in the recording and reporting of  
17 revenue, loss and expense experience in such form and detail as is necessary to aid the  
18 director in the establishment of rates and fees.

19 3. The director may require that the information provided pursuant to this section  
20 be verified by oath of the insurer's or agency's president or vice president or secretary or  
21 actuary, as applicable. The director may further require that the information required  
22 pursuant to this section be subject to an audit conducted at the expense of the title insurer  
23 or title agency by an independent certified public accountant. The director shall have the  
24 authority to establish a minimum threshold level at which an audit would be required.

25 4. Information filed with the director relating to the experience of a particular  
26 agency shall be kept confidential unless the director finds it in the public interest to disclose  
27 the information required of title insurers or title agencies pursuant to this section. Prior  
28 to any such disclosure of confidential information, the director shall provide notice and  
29 opportunity to be heard to the title insurers and title agencies who would be affected  
30 thereby.

381.035. No title insurance company, title agency or title agent shall willfully  
2 withhold information from, or knowingly give false or misleading information to the  
3 director, or to any title insurance rating organization, of which the title insurance company  
4 is a member or subscriber, which will affect the rates or fees chargeable pursuant to this  
5 chapter. Each violation of this section is a class A violation as that term is defined in  
6 section 381.045.

381.038. 1. Evidence of the examination of title and determination of insurability  
2 generated by a title insurer engaged in direct operations, title agency or title agent shall be  
3 preserved and maintained by such insurer, agency or agent for as long as appropriate to  
4 the circumstances but in no event less than fifteen years after the title insurance policy has  
5 been issued.

6 2. Records relating to escrow and security deposits shall be preserved and retained  
7 by a title insurer engaged in direct operations, title agency and title agent for as long as

8 appropriate to the circumstances but in no event less than five years after the escrow or  
9 security deposit account has been closed.

10 3. This section shall not apply to a title insurer acting as coinsurer if one of the  
11 other coinsurers has complied with this section.

12 4. Each violation of any provision of this section is a class C violation as that term  
13 is defined in section 381.045.

381.042. 1. The director may issue rules, regulations and orders necessary to carry  
2 out the provisions of this chapter.

3 2. No rule or portion of a rule promulgated pursuant to the authority of this  
4 chapter shall become effective unless it has been promulgated pursuant to the provisions  
5 of chapter 536, RSMo.

381.045. 1. If the director determines that the title insurer or any other person has  
2 violated this chapter, or any regulation or order promulgated thereunder, after notice and  
3 opportunity to be heard, the director may order:

4 (1) For each violation a monetary penalty which shall take into account the harm  
5 the violation caused or could have caused or potential harm to the public and which shall  
6 not exceed:

7 (a) One thousand dollars per violation for a class A violation;

8 (b) Five hundred dollars per violation for a class B violation; and

9 (c) One hundred dollars per violation for a class C violation;

10 (2) Revocation or suspension of the title insurer's license; or

11 (3) Both monetary penalty and revocation or suspension.

12 2. Nothing contained in this section shall affect the right of the director to impose  
13 any other penalties provided for in the insurance code.

14 3. Nothing contained in this chapter is intended to or shall in any other manner  
15 limit or restrict the rights of policyholders, claimants and creditors.

381.048. The director may bring an action in a court of competent jurisdiction to  
2 enjoin violations of the Real Estate Settlement Procedures Act, 12 U.S.C. Section 2607, as  
3 amended.

381.052. No person other than a domestic, foreign or non-United States title insurer  
2 organized on the stock plan and duly licensed by the director shall transact title insurance  
3 business as an insurer in this state.

381.055. Subject to the exceptions and restrictions contained in this chapter, a title  
2 insurer shall have the power to:

3 (1) Do only title insurance business;

4 (2) Reinsure title insurance policies; and

5           (3) Perform ancillary activities, unless prohibited by the director, including  
6 examining titles to real property and any interest in real property and procuring and  
7 furnishing related information and information about relevant personal property, when  
8 not in contemplation of, or in conjunction with, the issuance of a title insurance policy.

**381.058. 1.** No insurer that transacts any class, type or kind of business other than  
2 title insurance shall be eligible for the issuance or renewal of a license to transact the  
3 business of title insurance in this state nor shall title insurance be transacted, underwritten  
4 or issued by any insurer transacting or licensed to transact any other class, type or kind  
5 of business.

6           **2.** A title insurer shall not engage in the business of guaranteeing payment of the  
7 principal or the interest of bonds or mortgages.

8           **3. (1)** Notwithstanding subsection 1 of this section, and to the extent such coverage  
9 is lawful within this state, a title insurer is expressly authorized to issue closing or  
10 settlement protection to a proposed insured upon request if the title insurer issues a  
11 commitment, binder or title insurance policy. Such closing or settlement protection shall  
12 conform to the terms of coverage and form of instrument as required by the director and  
13 may indemnify a proposed insured solely against loss of settlement funds only because of  
14 the following acts of a title insurer's named title agency or title agent:

15           (a) Theft of settlement funds; and

16           (b) Failure to comply with written closing instructions by the proposed insured  
17 when agreed to by the title agency or title agent relating to title insurance coverage.

18           **(2)** The director may promulgate or approve a required charge for providing the  
19 coverage.

20           **(3)** A title insurer shall not provide any other coverage which purports to indemnify  
21 against improper acts or omissions of a person with regard to escrow, settlement, or closing  
22 services.

**381.062.** Before being licensed to do an insurance business in this state, a title  
2 insurer shall establish and maintain a minimum paid-in capital of not less than four  
3 hundred thousand dollars and, in addition, paid-in initial surplus of at least four hundred  
4 thousand dollars.

**381.065. 1.** The net retained liability of a title insurer for a single risk in regard to  
2 property located in this state, whether assumed directly or as reinsurance, shall not exceed  
3 the aggregate of fifty percent of surplus as regards policyholders plus the statutory  
4 premium reserve less the company's investment in title plants, all as shown in the most  
5 recent annual statement of the insurer on file with the director.

6           **2.** For purposes of this chapter:

7           (1) A single risk shall be the insured amount of any title insurance policy, except  
8 that, where two or more title insurance policies are issued simultaneously covering  
9 different estates in the same real property, a single risk shall be the sum of the insured  
10 amounts of all the title insurance policies; and

11           (2) A policy under which a claim payment reduces the amount of insurance under  
12 one or more other title insurance policies shall be included in computing the single risk sum  
13 only to the extent that its amount exceeds the aggregate amount of the policy or policies  
14 whose amount of insurance is reduced.

15           3. A title insurer may obtain reinsurance for all or any part of its liability under its  
16 title insurance policies or reinsurance agreements and may also reinsure title insurance  
17 policies issued by other title insurers on single risks located in this state or elsewhere.  
18 Reinsurance on policies issued on properties located in this state may be obtained from any  
19 title insurers licensed to transact title insurance business in this state, any other state, or  
20 the District of Columbia and which have a combined capital and surplus of at least eight  
21 hundred thousand dollars.

22           4. The director may waive the limitation of this section for a particular risk upon  
23 application of the title insurer and for good cause shown.

          381.068. In determining the financial condition of a title insurer doing business  
2 pursuant to this chapter, the general investment provisions of sections 376.300 to 376.305,  
3 RSMo, shall apply; except that, an investment in a title plant or plants in an amount equal  
4 to the actual cost shall be allowed as an admitted asset for title insurers. The aggregate  
5 amount of the investment shall not exceed fifty percent of surplus to policyholders, as  
6 shown on the most recent annual statement of the title insurer on file with the director.

          381.071. 1. No title insurance policy shall be written unless and until the title  
2 insurer, title agent, or agency has:

3           (1) Caused a search of title to be made from the evidence prepared from a title  
4 plant of the county where the property is located as herein defined, or if no such title plant  
5 of the county exists, or the owner of such plant refuses to furnish the title insurer, title  
6 agent, or agency desiring to insure, such title evidence at a reasonable charge and within  
7 a reasonable period of time, then such policy of title insurance shall be based upon the best  
8 title evidence available. An attorney licensed to practice law in this state may upon  
9 personal inspection use the best evidence available in any county and is not subject to the  
10 provisions of the title plant requirement of sections 381.011 to 381.241. The records on  
11 which the title plant is based on shall show all prior matters affecting the title to the  
12 property or interest therein for a continuous period of time of at least:

13           (a) The past ten years, by two years after September 28, 1987;

- 14           (b) The past fifteen years, by three years after September 28, 1987;  
15           (c) The past twenty years, by four years after September 28, 1987; and  
16           (d) The past twenty-seven years, by five years after September 28, 1987; and  
17           (2) Caused to be made a determination of insurability of title in accordance with  
18 sound underwriting practices.

19           2. Except when allowed by regulations promulgated by the director, no title  
20 insurer, title agent, or agency shall knowingly issue any owner's title insurance policy or  
21 commitment to insure without showing all outstanding, enforceable recorded liens or other  
22 interests against the title which is to be insured.

23           3. Evidence of the examination of title and determination of insurability shall be  
24 preserved and retained in the files of the title insurer or its title agent or agency for a  
25 period of not less than fifteen years after the title insurance policy has been issued. Instead  
26 of retaining the original evidence, the title insurer or title agent or agency may in the  
27 regular course of business establish a system whereby all or part of the evidence is  
28 recorded, copied, or reproduced by any process that accurately and legibly reproduces or  
29 forms a durable medium for reproducing the contents of the original.

30           4. This section shall not apply to:

- 31           (1) A title insurer assuming liability through a contract of reinsurance;  
32           (2) A title insurer acting as coinsurer if one of the other coinsuring title insurers has  
33 complied with this section; or  
34           (3) Policies of title insurance issued prior to the expiration of one year after  
35 September 28, 1987.

          381.072. In determining the financial condition of a title insurer doing business  
2 pursuant to this chapter, the general provisions of the insurance code requiring the  
3 establishment of reserves sufficient to cover all known and unknown liabilities including  
4 allocated and unallocated loss adjustment expense, shall apply; except that, a title insurer  
5 shall establish and maintain:

6           (1) (a) A known claim reserve in an amount estimated to be sufficient to cover all  
7 unpaid losses, claims and allocated loss adjustment expenses arising under title insurance  
8 policies for which the title insurer may be liable, and for which the insurer has discovered  
9 or received notice by or on behalf of the insured or escrow or security depositor;

10           (b) Upon receiving notice from or on behalf of the insured of a title defect in or lien  
11 or adverse claim against the title of the insured that may result in a loss or cause expense  
12 to be incurred in the proper disposition of the claim, the title insurer shall determine the  
13 amount to be added to the reserve, which amount shall reflect a careful estimate of the loss  
14 or loss expense likely to result by reason of the claim;

15           (c) Reserves required pursuant to this section may be revised from time to time and  
16 shall be redetermined at least once each year;

17           (2) A statutory or unearned premium reserve established and maintained as  
18 follows:

19           (a) A domestic title insurer shall establish and maintain an unearned premium  
20 reserve computed in accordance with this section, and all sums attributed to such reserve  
21 shall at all times and for all purposes be considered and constitute unearned portions of  
22 the original premiums. This reserve shall be reported as a liability of the title insurer in  
23 its financial statements;

24           (b) The unearned premium reserve shall be maintained by the title insurer for the  
25 protection of holders of title insurance policies. Except as provided in this section, assets  
26 equal in value to the reserve are not subject to distribution among creditors or stockholders  
27 of the title insurer until all claims of policyholders or claims under reinsurance contracts  
28 have been paid in full, and all liability on the policies or reinsurance contracts has been  
29 paid in full and discharged or lawfully reinsured;

30           (c) The unearned premium reserve shall consist of:

31           a. The amount of the unearned premium reserve on January 1, 2004; and

32           b. A sum equal to fifteen cents for each one thousand dollars of net retained  
33 liability under each title insurance policy, excluding mortgagee's policies simultaneously  
34 issued with owner's policies or owner's leasehold policies of the same or greater amount,  
35 on a single risk written on properties located in this state and issued after January 1, 2004;

36           (d) Amounts placed in the unearned premium reserve in any year in accordance  
37 with paragraph (c) of this subdivision shall be deducted in determining the net profit of the  
38 title insurer for that year;

39           (e) A title insurer shall release from the unearned premium reserve a sum equal to  
40 ten percent of the amount added to the reserve during a calendar year on July first of each  
41 of the five years following the year in which the sum was added, and shall release from the  
42 unearned premium reserve a sum equal to three and one-third percent of the amount  
43 added to the reserve during that year on each succeeding July first until the entire amount  
44 for that year has been released. The amount of the unearned premium reserve or similar  
45 unearned premium reserve maintained before January 1, 2004, shall be released in  
46 accordance with the law in effect immediately before January 1, 2004;

47           (f) a. Each domestic and foreign title insurer shall file annually with the audited  
48 financial report required pursuant to section 375.1032, RSMo, an actuarial certificate  
49 made by a member in good standing of the American Academy of Actuaries, or by an  
50 actuary permitted to make such certificate by the commissioner, superintendent or director



51 of the department of insurance of the state of incorporation of a foreign title insurer;

52       b. The actuarial certification shall conform to the annual statement instructions for  
53 title insurers adopted by the National Association of Insurance Commissioners and shall  
54 include the actuary's professional opinion of the insurer's reserves as of the date of the  
55 annual statement. The reserves analyzed pursuant to this section shall include reserves for  
56 known claims, including adverse developments on known claims, and reserves for incurred  
57 but not reported claims;

58       (g) a. Each domestic and foreign title insurer shall establish a supplemental reserve  
59 in the amount by which the actuarially certified reserves exceed the total of the known  
60 claim reserve and statutory premium reserve as set forth in the title insurer's annual  
61 financial report, subject to this subdivision;

62       b. The supplemental reserve required pursuant to this section shall be phased in  
63 as follows:

64       i. Twenty-five percent of the otherwise applicable supplemental reserve is required  
65 until December thirty-first of the year next following January 1, 2004;

66       ii. Fifty percent of the otherwise applicable supplemental reserve is required until  
67 December thirty-first of the second year following January 1, 2004;

68       iii. Seventy-five percent of the otherwise applicable supplemental reserve is  
69 required until December thirty-first of the third year following January 1, 2004;

70       iv. One hundred percent of the supplemental reserve is required after December  
71 thirty-first of the fourth year following January 1, 2004.

381.075. 1. Sections 375.570 to 375.750, RSMo, and sections 375.1150 to 375.1246,  
2 RSMo, shall apply to all title insurers subject to the title insurance act, except as otherwise  
3 provided in this section. In applying such sections, the court shall consider the unique  
4 aspects of title insurance and shall have broad authority to fashion relief that provides for  
5 the maximum protection of the title insurance policyholders.

6       2. Security and escrow funds held by or on behalf of the title insurer shall not  
7 become general assets and shall be administered as secured claims as defined in section  
8 375.1152, RSMo.

9       3. Title insurance policies that are in force at the time an order of liquidation is  
10 entered shall not be canceled except upon a showing to the court of good cause by the  
11 liquidator. The determination of good cause shall be within the discretion of the court. In  
12 making this determination, the court shall consider the unique aspects of title insurance  
13 and all other relevant circumstances.

14       4. The court may set appropriate dates that potential claimants must file their  
15 claims with the liquidator. The court may set different dates for claims based upon the title

16 insurance policy than for all other claims. In setting dates, the court shall consider the  
17 unique aspects of title insurance and all other relevant circumstances.

18 5. As of the date of the order of insolvency or liquidation, all premiums paid, due  
19 or to become due under policies of the title insurers, shall be fully earned. It shall be the  
20 obligation of title agencies, title agents, insureds or representatives of the title insurer to  
21 pay fully earned premium to the liquidator or rehabilitator.

381.078. A title insurer shall only declare or distribute a dividend to shareholders  
2 with the prior written approval of the director, as would be permitted pursuant to  
3 subdivision (1) of subsection 1 of section 382.210, RSMo.

381.085. 1. A title insurer or authorized rate service organization shall not deliver  
2 or issue for delivery or permit any of its authorized title agencies or title agents to deliver  
3 in this state, any form, in connection with title insurance written, unless it has been filed  
4 with the director and approved by the director or thirty days have elapsed and it has not  
5 been disapproved as misleading or violative of public policy. Each violation of this  
6 subsection is a class C violation as that term is defined in section 381.045.

7 2. Forms covered by this section shall include:

8 (1) Title insurance policies, including standard form endorsements; and

9 (2) Title insurance commitments issued prior to the issuance of a title insurance  
10 policy.

11 3. After notice and opportunity to be heard are given to the insurer or rate service  
12 organization which submitted a form for approval, the director may withdraw approval  
13 of the form on finding that the use of the form is contrary to the legal requirements  
14 applicable at the time of withdrawal. The effective date of withdrawal of approval shall  
15 not be less than ninety days after notice of withdrawal is given.

16 4. Any term or condition related to an insurance coverage provided by an approved  
17 title insurance policy or any exception to the coverage, except those ascertained from a  
18 search and examination of records relating to a title or inspection or survey of a property  
19 to be insured, may only be included in the policy after the term, condition or exception has  
20 been filed with the director and approved as herein provided.

381.088. 1. A title insurer may satisfy its obligation to file premium rates, rating  
2 manuals and forms as required by this chapter by becoming a member of, or a subscriber  
3 to, a rate service organization, organized and licensed pursuant to the provisions of this  
4 chapter, where the organization makes the filings, and by authorizing the director in  
5 writing to accept the filings on the insurer's behalf.

6 2. Nothing in this chapter shall be construed as requiring any title insurer, title  
7 agency or title agent to become a member of, or a subscriber to, any rate service

8 organization. Nothing in this chapter shall be construed as prohibiting the filing of  
9 deviations from rate service organization filings by any member or subscriber.

381.092. 1. Every title insurer that shall propose its own premium rates and every  
2 title insurance rating organization shall propose premium rates that are not excessive nor  
3 inadequate for the safety and soundness of any title insurer, which do not unfairly  
4 discriminate between risks in this state which involve essentially the same exposure to loss  
5 and expense elements, and which shall give due consideration to the following matters:

6 (1) The desirability for stability and responsiveness of rate structures; and

7 (2) The necessity of assuring the financial solvency of title insurance companies in  
8 periods of economic depression.

9 2. Every title insurer that shall propose its own rates and every title insurance  
10 rating organization may adopt basic classifications of policies or contracts of title insurance  
11 which shall be used as the basis for rates.

381.095. 1. If the director shall find in his review of rate filings that the filings  
2 provide for, result in, or produce rates that are not unreasonably high, and are not  
3 inadequate for the safety and soundness of the insurer, and are not unfairly  
4 discriminatory between risks in this state involving essentially the same hazards and  
5 expense elements, the director shall approve such rates. Prior to such approval the  
6 director may conduct a public hearing with respect to a rate filing. An approval shall  
7 continue in effect until the director shall issue an order of disapproval pursuant to the  
8 requirements and procedure provided for in subsections 2 and 3 of this section.

9 2. Upon the review at any time by the director of a rate filing, the director shall,  
10 before issuing an order of disapproval, hold a hearing upon not less than ten days' written  
11 notice, specifying in reasonable detail the matters to be considered at such hearing, to every  
12 title insurer and title insurance rating organization which made such filing, and if, after  
13 such hearing, the director finds that such filing or a part thereof does not meet the  
14 requirements of this chapter, the director shall issue an order specifying in what respects  
15 the director finds that it so fails, and stating when, within a reasonable period thereafter,  
16 such filing or a part thereof shall be deemed no longer effective. A title insurer or title  
17 insurance rating organization shall have the right at any time to withdraw a filing or a part  
18 thereof, subject to the provisions of section 381.102, in the case of deviation filing. Copies  
19 of the order shall be sent to every title insurer and title insurance rating organization  
20 affected. The order shall not affect any contract or policy made or issued prior to the  
21 expiration of the period set forth in the order.

22 3. Any person or organization aggrieved with respect to any filing which is in effect  
23 may make written application to the director for a hearing thereon. The title insurance

24 company or title insurance rating organization that made the filing shall not be authorized  
25 to proceed pursuant to this subsection. Such application shall specify in reasonable detail  
26 the grounds to be relied upon by the applicant. If the director shall find that the  
27 application is made in good faith, that the applicant would be so aggrieved if his or her  
28 grounds are established, and that such grounds otherwise justify holding such a hearing,  
29 the director shall, within thirty days after receipt of such application, hold a hearing upon  
30 not less than ten days' written notice to the applicant and to every title insurance company  
31 and title insurance rating organization which made such a filing. If, after such hearing,  
32 the director finds that the filing or a part thereof does not meet the requirements of this  
33 chapter, the director shall issue an order specifying in what respects the director finds that  
34 such filing or a part thereof fails to meet the requirements of this chapter, stating when  
35 within a reasonable period thereafter, such filing or a part thereof shall be deemed no  
36 longer effective. Copies of such order shall be sent to the applicant and to every such title  
37 insurer and title insurance rating organization. The order shall not affect any contract or  
38 policy made or issued prior to the expiration of the period set forth in the order.

381.098. 1. A corporation, an unincorporated association, a partnership or an  
2 individual, whether located within or outside this state, may make application to the  
3 director for license as a rating organization for title insurers, and shall file therewith:

4 (1) A copy of its constitution, its articles of agreement or association or its  
5 certificate of incorporation, and of its bylaws, rules and regulations governing the conduct  
6 of its business;

7 (2) A list of its members and subscribers;

8 (3) The name and address of a resident of this state upon whom notices or orders  
9 of the director or process affecting such rating organization may be served; and

10 (4) A statement of its qualifications as a title insurance rating organization.

11 2. If the director finds that the applicant is competent, trustworthy and otherwise  
12 qualified to act as a rating organization, and that its constitution, articles of agreement or  
13 association or certificate of incorporation, and its bylaws, rules and regulations governing  
14 the conduct of its business, conform to requirements of law, the director shall issue a  
15 license authorizing the applicant to act as a rating organization for title insurance.  
16 Licenses issued pursuant to this section shall remain in effect for three years unless sooner  
17 suspended or revoked by the director or withdrawn by the licensee. The fee for such  
18 license shall be one thousand five hundred dollars. Licenses issued pursuant to this section  
19 may be suspended or revoked by the director, after hearing upon notice, in the event the  
20 rating organization ceases to meet the requirements of this subsection. Every rating  
21 organization shall notify the director promptly of every change in:

22           (1) Its constitution, its articles of agreement or association or its certificate of  
23 incorporation, and its bylaws, rules and regulations governing the conduct of its business;

24           (2) Its list of members and subscribers; and

25           (3) The name and address of the resident of this state designated by it upon whom  
26 notices or orders of the director or process affecting such rating organization may be  
27 served.

28           3. Subject to rules and regulations which have been approved by the director as  
29 reasonable, each title insurance rating organization shall permit any title insurance  
30 company not a member to be a subscriber to its rating services. Notices of proposed  
31 changes in such rules and regulations shall be given to subscribers. Each such rating  
32 organization shall furnish its rating services without discrimination to its members and  
33 subscribers. The reasonableness of any rule or regulation in its application to subscribers,  
34 or the refusal of any such rating organization to admit a title insurance company as a  
35 subscriber, shall at the request of any subscriber or any such title insurance company, be  
36 reviewed by the director at a hearing held upon at least ten days' written notice to such  
37 rating organization and to such subscriber. If the director finds that such rule or  
38 regulation is unreasonable in its application to subscribers, the director shall order that  
39 such rule or regulation shall not be applicable to subscribers. If the rating organization  
40 fails to grant or reject an application of a title insurance company for subscribership  
41 within thirty days after it was made, the title insurance company may request a review by  
42 the director as if the application had been rejected. If the director finds that the title  
43 insurance company has been refused admittance to the title insurance rating organization  
44 as a subscriber without justification, the director shall order such rating organization to  
45 admit the title insurance company as a subscriber. If the director finds that the action of  
46 the title insurance rating organization was justified, the director shall make an order  
47 affirming its action.

          381.102. Every member of or subscriber to a title insurance rating organization  
2 shall adhere to the filings made on its behalf by such organization, except that any title  
3 insurance company which is a member of or subscriber to such a rating organization may  
4 file with the director a uniform percentage of decrease or increase to be applied to any or  
5 all elements of the fees produced by the rating system so filed for a class of title insurance  
6 which is found by the director to be a proper rating unit for the application of such  
7 uniform decrease or increase, or to be applied to the rates for a particular area, or  
8 otherwise deviate from the rating plans, policy forms or other matters which are the  
9 subject of filings pursuant to this chapter. Such deviation filing shall specify the basis for  
10 the modification and shall be accompanied by the data or historical pattern upon which

11 the applicant relies. A copy of the deviation filing and data shall be sent simultaneously  
12 to such rating organization. Deviation filings shall be subject to the provisions of section  
13 381.095.

381.105. 1. Any member of or subscriber to a title insurance rating organization  
2 may appeal to the director from any action or decision of such rating organization in  
3 approving or rejecting any proposed change in or addition to the filings of such rating  
4 organization, and the director shall, after a hearing held upon not less than ten days'  
5 written notice to the appellant and to such rating organization, issue an order approving  
6 the action or decision of such rating organization or directing it to give further  
7 consideration to such proposal and to take action or make a decision upon it within thirty  
8 days. If such appeal is from the action or decision of the title insurance rating organization  
9 in rejecting a proposed addition to its filings, the director may, in the event the director  
10 finds that such action or decision was unreasonable, issue an order directing the rating  
11 organization to make an addition to its filings, on behalf of its members and subscribers,  
12 in a manner consistent with the director's findings, within a reasonable time after the  
13 issuance of such order. If the appeal is from the action of the title insurance rating  
14 organization with regard to a rate or a proposed change in or addition to its filings relating  
15 to the character and extent of coverage, the director shall approve the action of the rating  
16 organization or such modification thereof as shall have been suggested by the appellant if  
17 either be made in accordance with this chapter.

18 2. The failure of a title insurance rating organization to take action or make a  
19 decision within thirty days after submission to it of a proposal pursuant to this section shall  
20 constitute a rejection of such proposal within the meaning of this section. If such appeal  
21 is based upon the failure of the rating organization to make a filing on behalf of such  
22 member or subscriber which is based on a system of expense allocation which differs from  
23 the system of expense allocation included in a filing made by such rating organization, the  
24 director shall, if the director grants the appeal, order the rating organization to make the  
25 requested filing for use by the appellant. In deciding such appeal, the director shall apply  
26 the standards set forth in section 381.032.

381.108. 1. The director shall promulgate reasonable rules and statistical plans,  
2 reasonably adapted to each of the rating systems on file with the department, which may  
3 be modified from time to time, and which shall be used thereafter by each title insurer in  
4 the recording and reporting of the composition of its business, its loss and countrywide  
5 expense experience and those of its title insurance underwriters in order that the  
6 experience of all title insurers may be made available, at least annually, in such form and  
7 detail as may be necessary to aid him or her in determining whether rating systems comply

8 with the standards set forth in this chapter. Such rules and plans may also provide for the  
9 recording of expense experience items which are specially applicable to this state and are  
10 not susceptible of determination by a prorating of countrywide expense experience. In  
11 promulgating such rules and plans, the director shall give due consideration to the rating  
12 systems on file with the department, and in order that such rules and plans may be as  
13 uniform as is practicable among the several states, to the rules and to the form of the plans  
14 used for such rating systems in other states. Such rules and plans shall not place an  
15 unreasonable burden of expense on any title insurer. No title insurer shall be required to  
16 record or report its expense and loss experience on a classification basis that is inconsistent  
17 with the rating system filed by it, nor shall any title insurer be required to report the  
18 experience to any agency of which it is not a member or subscriber. The director may  
19 designate one or more rating organizations or other agencies to assist the director in  
20 gathering such experience and making compilations thereof, and such compilations shall  
21 be made available, subject to reasonable rules promulgated by the director, to title insurers  
22 and rating organizations. The director shall give preference in such designation to entities  
23 organized by and functioning on behalf of title insurers operating in this state. If the  
24 director, in his or her judgment, determines that one or more of such organizations  
25 designated as statistical agents is unable or unwilling to perform its statistical functions  
26 according to reasonable requirements established from time to time by the director, he or  
27 she may, after consultation with such statistical agent and upon twenty days' notice to any  
28 affected companies, designate another person to act on the director's behalf in the  
29 gathering of statistical experience. The director shall in such case establish the fee to be  
30 paid to such designated person by the affected companies in order to pay the total cost of  
31 gathering and compiling such experience. Agencies designated by the director shall assist  
32 the director in making compilations of the reported data and such compilations shall be  
33 made available, subject to reasonable rules and regulations promulgated by the director,  
34 to insurers, rating organizations and any other interested parties.

35       2. Reasonable rules and plans may be promulgated by the director for the  
36 interchange of data necessary for the application of rating plans.

37       3. In order to further uniform administration of rate regulatory laws, the director  
38 and every title insurer and rating organization may exchange information and experience  
39 data with insurance supervisory officials, title insurers and rating organizations in other  
40 states, and may consult with them with respect to rate making and the application of rating  
41 systems.

42       4. No rule or portion of a rule promulgated pursuant to the authority of this section  
43 shall become effective unless it has been promulgated pursuant to the provisions of chapter

44 536, RSMo.

381.112. For purposes of the premium tax imposed by sections 148.320 and 148.340, RSMo, the premium income received by a title insurer shall mean the amount of premium actually remitted to the title insurer and shall exclude any amount of premium retained by the title agent within the definition of "premium" contained in section 381.009.

381.115. 1. A person shall not act in the capacity of a title agency or title agent and a title insurer may not contract with any person to act in the capacity of a title agency or title agent with respect to risks located in this state unless the person is a licensed title agency or title agent in this state.

2. An individual employed by a licensed title agency or title agent to whom the agency or agent delegates authority to act on that agency's or agent's behalf shall be either individually licensed or be named on the employing agent's license if such employee performs any of the functions defined in paragraph (a) of subdivision (25) of section 381.009. Each person named on the license shall possess all qualifications determined by the director to be appropriate. The director may adopt rules, regulations, and requirements relating to licensing and practices of persons acting in the capacity of title agencies or agents. These persons may include title agencies, title agents, employees of either, and persons acting on behalf of title agencies or title agents. This subsection is not intended to include persons performing clerical functions.

3. Every title agency licensed in this state shall:

(1) Exclude or eliminate the word insurer or underwriter from its business name, unless the word agency is also included as part of the name; and

(2) Provide, in a timely fashion, each title insurer with which it places business any information the title insurer requests in order to comply with reporting requirements of the director.

4. A title agency or title agent licensed in this state prior to the effective date of this chapter shall have ninety days after the effective date of this chapter to comply with the requirements of this section.

5. If the title agency or title agent delegates the title search to a third party, such as an abstract company, the agency or agent must first obtain proof that the third party is operating in compliance with rules and regulations established by the director and the third party shall provide the agency or agent and the insurer with access to and the right to copy all accounts and records maintained by the third party with respect to business placed with the title insurer. Proof from the third party may consist of a signed statement indicating compliance, and shall be effective for a three-year period. Each violation of this subsection is a class C violation as that term is defined in section 381.045.



381.118. 1. Each title agent licensed to sell title insurance in this state, unless  
2 exempt pursuant to subsection 8 of this section, shall successfully complete courses of study  
3 as required by this section. Any person licensed to act as a title agent shall, during each  
4 two years, attend courses or programs of instruction or attend seminars equivalent to a  
5 minimum of eight hours of instruction. The initial such two-year period shall begin  
6 January first of the year next following the effective date of this chapter.

7 2. Subject to approval by the director, the courses or programs of instruction which  
8 shall be deemed to meet the director's standards for continuing educational requirements  
9 shall include, but not be limited to, the following:

10 (1) An insurance-related course taught by an accredited college or university or  
11 qualified instructor who has taught a course of insurance law at such institution;

12 (2) A course or program of instruction or seminar developed or sponsored by any  
13 authorized insurer, recognized agents' association or insurance trade association. A local  
14 agents' group may also be approved if the instructor receives no compensation for services;

15 (3) Courses approved for continuing legal education credit by the Missouri Bar.

16 3. A person teaching any approved course of instruction or lecturing at any  
17 approved seminar shall qualify for the same number of classroom hours as would be  
18 granted to a person taking and successfully completing such course, seminar or program.

19 4. Excess classroom hours accumulated during any two-year period may be carried  
20 forward to the two-year period immediately following the two- year period in which the  
21 course, program or seminar was held.

22 5. For good cause shown, the director may grant an extension of time during which  
23 the educational requirements imposed by this section may be completed, but such extension  
24 of time shall not exceed the period of one calendar year. The director may grant an  
25 individual waiver of the mandatory continuing education requirement upon a showing by  
26 the licensee that it is not feasible for the licensee to satisfy the requirements prior to the  
27 renewal date. Waivers may be granted for reasons including, but not limited to:

28 (1) Serious physical injury or illness;

29 (2) Active duty in the armed services for an extended period of time;

30 (3) Residence outside the United States; or

31 (4) Licensee is at least seventy years of age and is currently licensed as a title agent.

32 6. Every person subject to the provisions of this section shall furnish in a form  
33 satisfactory to the director, written certification as to the courses, programs, or seminars  
34 of instruction taken and successfully completed by such person. A filing fee shall be paid  
35 by the person furnishing the report as determined by the director to be necessary to cover  
36 the administrative cost related to the handling of such certification reports, subject to the

37 limitations imposed in subsection 9 of this section.

38       7. The provisions of this section shall not apply to those natural persons holding or  
39 applying for a license to act as a title agent in Missouri who reside in a state that has  
40 enacted and implemented a mandatory continuing education law or regulation pertaining  
41 to title agents. However, those natural persons holding or applying for a Missouri agent  
42 license who reside in states which have no mandatory continuing education law or  
43 regulations shall be subject to all the provisions of this section to the same extent as  
44 resident Missouri title agents.

45       8. Rules necessary to implement and administer this section shall be promulgated  
46 by the director of the department of insurance, including, but not limited to, rules  
47 regarding the following:

48       (1) The insurance advisory board established by section 375.019, RSMo, shall be  
49 utilized by the director to assist the director in determining acceptable content of courses,  
50 programs and seminars to include classroom equivalency;

51       (2) Every applicant seeking approval by the director of a continuing education  
52 course pursuant to this section shall pay to the director a filing fee of fifty dollars per  
53 course, except that such total fee shall not exceed two hundred fifty dollars per year for any  
54 single applicant. Fees shall be waived for local agents' groups if the instructor receives no  
55 compensation for services. Such fee shall accompany any application form required by the  
56 director. Courses shall be approved for a period of no more than one year. Applicants  
57 holding courses intended to be offered for a longer period must reapply for approval;

58       (3) The director has the authority to determine the amount of the filing fee to be  
59 paid by title agents at the time of license renewal, which shall be set at an amount to  
60 produce revenue which shall not substantially exceed the cost of administering this section,  
61 but in no event shall such fee exceed ten dollars per biennial report filed.

62       9. All funds received pursuant to the provisions of this section shall be transmitted  
63 by the director of the department of insurance to the department of revenue for deposit in  
64 the state treasury to the credit of the department of insurance dedicated fund. All  
65 expenditures necessitated by this section shall be paid from funds appropriated from the  
66 department of insurance dedicated fund by the legislature.

67       10. When a title agent pays his or her biennial renewal fee, such agent shall also  
68 furnish the written certification and filing fee required by this section.

69       11. No rule or portion of a rule promulgated pursuant to the authority of this  
70 section shall become effective unless it has been promulgated pursuant to the provisions  
71 of chapter 536, RSMo.

381.122. The director may during normal business hours examine, audit and

2 inspect any and all books and records maintained by a title agency pursuant to this  
3 chapter.

381.125. 1. Whenever the business to be written constitutes affiliated business,  
2 prior to commencing the transaction, the title agency or title agent shall ensure that its  
3 customer has been provided with disclosure of the existence of the affiliated business  
4 arrangement and a written estimate of the charge or range of charges generally made for  
5 the title services provided by the title agency or agent.

6 2. The director may establish rules for use by all title agencies in the recording and  
7 reporting of the agency's owners and of the agency's ownership interests in other persons  
8 or businesses and of material transactions between the parties.

9 3. The director may require each title agency to file on forms prescribed by the  
10 director reports setting forth the names and addresses of those persons, if any, that have  
11 a financial interest in the agency and who the agency knows or has reason to believe are  
12 producers of title insurance business or associates of producers.

13 4. Nothing in this chapter shall be construed as prohibiting affiliated business  
14 arrangements in the provision of title insurance business so long as:

15 (1) The title agency, title agent or party making a referral constituting affiliated  
16 business, at or prior to the time of the referral, discloses the arrangement and, in  
17 connection with the referral, provides the person being referred with a written estimate of  
18 the charge or range of charges likely to be assessed and otherwise complies with the  
19 disclosure obligations of this section;

20 (2) The person being referred is not required to use a specified title insurance  
21 agency, agent or insurer; and

22 (3) The only thing of value that is received by the title agency, title agent or party  
23 making the referral, other than payments otherwise permitted, is a return on an ownership  
24 interest.

25 For purposes of this subsection, the terms "required use" and "return on an ownership  
26 interest" shall have the meaning accorded to them under the Real Estate Settlement  
27 Procedures Act (RESPA), 12 U.S.C. Section 2607, as amended and Regulation X, 24 CFR  
28 Section 3500, et seq.

29 5. Each violation of any provision of this section is a class C violation as that term  
30 is defined in section 381.045.

381.410. As used in this section and section 381.412, the following terms mean:

2 (1) "Cashier's check", a check, however labeled, drawn on the financial institution,  
3 which is signed only by an officer or employee of such institution, is a direct obligation of  
4 such institution, and is provided to a customer of such institution or acquired from such

5 institution for remittance purposes;

6 (2) "Certified funds", United States currency, funds conveyed by a cashier's check,  
7 certified check, teller's check, as defined in Federal Reserve Regulations CC, or wire  
8 transfers, including written advice from a financial institution that collected funds have  
9 been credited to the settlement agent's account;

10 (3) "Director", the director of the department of insurance, unless the settlement  
11 agent's primary regulator is another division in the department of economic development.  
12 When the settlement agent is regulated by such division, that division shall have  
13 jurisdiction over this section and section 381.412;

14 (4) "Financial institution":

15 (a) A person or entity doing business pursuant to the laws of this state or the United  
16 States relating to banks, trust companies, savings and loan associations or credit unions;  
17 or

18 (b) The following persons or entities if their principal place of business is in  
19 Missouri or outside Missouri, but within the St. Louis or Kansas City standard  
20 metropolitan statistical area:

21 a. A mortgage loan company which is subject to licensing, supervision or auditing  
22 by the Federal National Mortgage Association, or the Federal Home Loan Mortgage  
23 Corporation, or the United States Veterans Administration, or the Government National  
24 Mortgage Association, or the United States Department of Housing and Urban  
25 Development, or a successor of any of the foregoing agencies or entities, as an approved  
26 seller or servicer;

27 (5) "Settlement agent", a person, corporation, partnership, or other business  
28 organization which accepts funds and documents as fiduciary for the buyer, seller or  
29 lender for the purposes of closing a sale of an interest in real estate located within the state  
30 of Missouri, and is not a financial institution, or a member in good standing of the Missouri  
31 Bar , or a person licensed under chapter 339, RSMo.

381.412. 1. A settlement agent who accepts funds of more than ten thousand dollars  
2 for closing a sale of an interest in real estate shall require a buyer, seller or lender who is  
3 not a financial institution to convey such funds to the settlement agent as certified funds.  
4 A check:

5 (1) Drawn on an escrow account of a licensed real estate broker, as regulated and  
6 described in section 339.105, RSMo;

7 (2) Drawn on an escrow account of a title insurer or title insurance agency licensed  
8 to do business in Missouri;

9 (3) Drawn on an agency of the United States of America, the state of Missouri or

10 any county or municipality of the state of Missouri; or  
11 (4) Drawn on an account by a financial institution;

12

13 shall be exempt from the provisions of this section.

14 2. No title insurer, title insurance agency or title insurance agent, as defined in  
15 section 381.009, shall make any payment, disbursement or withdrawal in excess of ten  
16 thousand dollars from an escrow account which it maintains as a depository of funds  
17 received from the public for the settlement of real estate transactions unless a  
18 corresponding deposit of funds was made to the escrow account for the benefit of the payee  
19 or payees:

20 (1) At least ten days prior to such payment, disbursement or withdrawal;

21 (2) Which consisted of certified funds; or

22 (3) Consisted of a check made exempt from this section by the provisions of  
23 subsection 1 of this section.

24 3. If the director finds that a settlement agent, title insurer, title insurance agency  
25 or title insurance agent has violated any provisions of this section, the director may assess  
26 a fine of not more than two thousand dollars for each violation, plus the costs of the  
27 investigation. Each separate transaction where certified funds are required shall constitute  
28 a separate violation. In determining a fine, the director shall consider the extent to which  
29 the violation was a knowing and willful violation, the corrective action taken by the  
30 settlement agent to ensure that the violation will not be repeated, and the record of the  
31 settlement agent in complying with the provisions of this section.

2 [381.003. 1. Sections 381.003 to 381.125 shall be known and may be cited  
as the "Missouri Title Insurance Act".

3 2. Sections 381.009 to 381.048 shall apply to all persons engaged in the  
4 business of title insurance in this state. Sections 381.052 to 381.112 shall apply to  
5 all title insurers engaged in the business of title insurance in this state. Sections  
6 381.115 to 381.125 shall apply to all title agencies engaged in the business of title  
7 insurance in this state.

8 3. Except as otherwise expressly provided in this chapter and except where  
9 the context otherwise requires, all provisions of the insurance code applying to  
10 insurance and insurance companies generally shall apply to title insurance, title  
11 insurers and title agents.]

2 [381.009. As used in this chapter, the following terms mean:

3 (1) "Abstract of title" or "abstract", a written history, synopsis or summary  
4 of the recorded instruments affecting the title to real property;

5 (2) "Affiliate", a specific person that directly, or indirectly through one or  
6 more intermediaries, controls, or is controlled by, or is under common control with,  
the person specified;

7 (3) "Affiliated business", any portion of a title insurance agency's business  
8 written in this state that was referred to it by a producer of title insurance business or  
9 by an associate of the producer, where the producer or associate, or both, have a  
10 financial interest in the title agency;

11 (4) "Associate", any:

12 (a) Business organized for profit in which a producer of title business is a  
13 director, officer, partner, employee or an owner of a financial interest;

14 (b) Employee of a producer of title business;

15 (c) Franchisor or franchisee of a producer of title business;

16 (d) Spouse, parent or child of a producer of title insurance business who is  
17 a natural person;

18 (e) Person, other than a natural person, that controls, is controlled by, or is  
19 under common control with, a producer of title business;

20 (f) Person with whom a producer of title insurance business or any associate  
21 of the producer has an agreement, arrangement or understanding, or pursues a course  
22 of conduct, the purpose or effect of which is to provide financial benefits to that  
23 producer or associate for the referral of business;

24 (5) "Bona fide employee of the title insurer", an individual who devotes  
25 substantially all of his or her time to performing services on behalf of a title insurer  
26 and whose compensation for those services is in the form of salary or its equivalent  
27 paid by the title insurer;

28 (6) "Control", including the terms "controlling", "controlled by" and "under  
29 common control with", the possession, direct or indirect, of the power to direct or  
30 cause the direction of the management and policies of a person, whether through the  
31 ownership of voting securities, by contract other than a commercial contract for  
32 goods or nonmanagement services, or otherwise, unless the power is the result of an  
33 official position or corporate office held by the person. Control shall be presumed  
34 to exist if a person, directly or indirectly, owns, controls, holds with the power to vote  
35 or holds proxies representing ten percent or more of the voting securities of another  
36 person. This presumption may be rebutted by showing that control does not exist in  
37 fact. The director may determine, after furnishing all persons in interest notice and  
38 opportunity to be heard and making specific findings of fact to support the  
39 determination, that control exists in fact, notwithstanding the absence of a  
40 presumption to that effect;

41 (7) "County" or "counties" includes any city not within a county;

42 (8) "Direct operations", that portion of a title insurer's operations which are  
43 attributable to business written by a bona fide employee;

44 (9) "Director", the director of the department of insurance, or the director's  
45 representatives;

46 (10) "Escrow", written instruments, money or other items deposited by one  
47 party with a depository, escrow agent or escrowee for delivery to another party upon  
48 the performance of a specified condition or the happening of a certain event;

49 (11) "Escrow, settlement or closing fee", the consideration for supervising

50 or handling the actual execution, delivery or recording of transfer and lien documents  
51 and for disbursing funds;

52 (12) "Financial interest", a direct or indirect legal or beneficial interest, where  
53 the holder is or will be entitled to five percent or more of the net profits or net worth  
54 of the entity in which the interest is held;

55 (13) "Foreign title insurer", any title insurer incorporated or organized  
56 pursuant to the laws of any other state of the United States, the District of Columbia,  
57 or any other jurisdiction of the United States;

58 (14) "Geographically indexed or retrievable", a system of keeping recorded  
59 documents which includes as a component a method for discovery of the documents  
60 by:

61 (a) Searching an index arranged according to the description of the affected  
62 land; or

63 (b) An electronic search by description of the affected land;

64 (15) "Net retained liability", the total liability retained by a title insurer for  
65 a single risk, after taking into account any ceded liability and collateral, acceptable  
66 to the director, and maintained by the insurer;

67 (16) "Non-United States title insurer", any title insurer incorporated or  
68 organized pursuant to the laws of any foreign nation or any province or territory;

69 (17) "Premium", the consideration paid by or on behalf of the insured for the  
70 issuance of a title insurance policy or any endorsement or special coverage. It does  
71 not include consideration paid for settlement or escrow services or  
72 noninsurance-related information services;

73 (18) "Producer", any person, including any officer, director or owner of five  
74 percent or more of the equity or capital of any person, engaged in this state in the  
75 trade, business, occupation or profession of:

76 (a) Buying or selling interests in real property;

77 (b) Making loans secured by interests in real property; or

78 (c) Acting as broker, agent, representative or attorney of a person who buys  
79 or sells any interest in real property or who lends or borrows money with the interest  
80 as security;

81 (19) "Qualified depository institution", an institution that is:

82 (a) Organized or, in the case of a United States branch or agency office of a  
83 foreign banking organization, licensed pursuant to the laws of the United States or  
84 any state and has been granted authority to operate with fiduciary powers;

85 (b) Regulated, supervised and examined by federal or state authorities having  
86 regulatory authority over banks and trust companies;

87 (c) Insured by the appropriate federal entity; and

88 (d) Qualified under any additional rules established by the director;

89 (20) "Referral", the directing or the exercising of any power or influence over  
90 the direction of title insurance business, whether or not the consent or approval of any  
91 other person is sought or obtained with respect to the referral;

92 (21) "Search", "search of the public records" or "search of title", a search of

those records established by the laws of this state for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge;

(22) "Security" or "security deposit", funds or other property received by the title insurer as collateral to secure an indemnitor's obligation under an indemnity agreement pursuant to which the insurer is granted a perfected security interest in the collateral in exchange for agreeing to provide coverage in a title insurance policy for a specific title exception to coverage;

(23) "Subsidiary", an affiliate controlled by a person directly or indirectly through one or more intermediaries;

(24) "Title agency" means an authorized person who issues title insurance on behalf of a title insurer. An attorney licensed to practice law in this state who issues title insurance as a part of his or her law practice, but does not maintain or operate a title insurance business separate from such law practice is not a title agency;

(25) "Title agent" or "agent", an attorney licensed to practice law in this state who issues title insurance as part of his or her law practice, but who is not affiliated with or acting on behalf of a title agency, or an authorized person who, on behalf of a title agency or on behalf of a title agent not affiliated with a title agency, performs one or more of the following acts in conjunction with the issuance of a title insurance commitment or policy:

(a) Determines insurability, based upon a review of a search of title;

(b) Performs searches;

(c) Handles escrows, settlements or closings; or

(d) Solicits or negotiates title insurance business;

(26) "Title insurance business" or "business of title insurance":

(a) Issuing as insurer or offering to issue as insurer a title insurance policy;

(b) Transacting or proposing to transact by a title insurer any of the following activities when conducted or performed in contemplation of and in conjunction with the issuance of a title insurance policy:

a. Soliciting or negotiating the issuance of a title insurance policy;

b. Guaranteeing, warranting or otherwise insuring the correctness of title searches for all instruments affecting titles to real property, any interest in real property, cooperative units and proprietary leases and for all liens or charges affecting the same;

c. Handling of escrows, settlements or closings;

d. Executing title insurance policies;

e. Effecting contracts of reinsurance; or

f. Abstracting, searching or examining titles;

(c) Guaranteeing, warranting or insuring searches or examinations of title to real property or any interest in real property;

(d) Guaranteeing or warranting the status of title as to ownership of or liens on real property by any person other than the principals to the transaction;

(e) Promising to purchase or repurchase for consideration an indebtedness



because of a title defect, whether or not involving a transfer of risk to a third person;  
or

(f) Promising to indemnify the holder of a mortgage or deed of trust against loss from the failure of the borrower to pay the mortgage or deed of trust when due if the property fails to yield sufficient proceeds upon foreclosure to satisfy the debt, when one or both of the following conditions exist:

a. The security has been impaired by the discovery of a previously unknown property interest in favor of one who is not liable for the payment of the mortgage or deed of trust; or

b. Perfection of the position of the mortgage or deed of trust which was assured to exist cannot be obtained, notwithstanding timely recordation with the recorder of deeds of the county in which the property is located; or

(g) Doing or proposing to do any business substantially equivalent to any of the activities listed in this subdivision in a manner designed to evade the provisions of this chapter;

(27) "Title insurance commitment" or "commitment", a preliminary report, commitment or binder issued prior to the issuance of a title insurance policy containing the terms, conditions, exceptions and other matters incorporated by reference under which the title insurer is willing to issue its title insurance policy. A title insurance commitment is not an abstract of title;

(28) "Title insurance policy" or "policy", a contract insuring or indemnifying owners of, or other persons lawfully interested in, real property or any interest in real property, against loss or damage arising from any or all of the following conditions existing on or before the policy date and not excepted or excluded:

(a) Title to the estate or interest in land being otherwise than as stated in the policy;

(b) Defects in or liens or encumbrances on the insured title;

(c) Unmarketability of the insured title;

(d) Lack of legal right of access to the land;

(e) Invalidity or unenforceability of the lien of an insured mortgage;

(f) The priority of a lien or encumbrance over the lien of any insured mortgage;

(g) The lack of priority of the lien of an insured mortgage over a statutory lien for services, labor or material;

(h) The invalidity or unenforceability of an assignment of the insured mortgage; or

(i) Rights or claims relating to the use of or title to the land;

(29) "Title insurer" or "insurer", a company organized pursuant to laws of this state for the purpose of transacting the business of title insurance and any foreign or non-United States title insurer licensed in this state to transact the business of title insurance;

(30) "Title plant", a set of records encompassing at least the most recent forty-five years, consisting of documents, maps, surveys or entries affecting title to

real property or any interest in or encumbrance on the property, which have been filed or recorded in the jurisdiction for which the title plant is established or maintained. The records in the title plant shall be geographically indexed or retrievable as to those records containing a legal description of affected land, and otherwise by name of affected person;

(31) "Underwrite", the authority to accept or reject risk on behalf of the title insurer.]

[381.015. 1. When a title insurance commitment issued by a title insurer, title agency or title agent includes an offer to issue an owner's policy covering the resale of owner-occupied residential property, the commitment shall incorporate the following statement in bold type:

"Please read the exceptions and the terms shown or referred to herein carefully. The exceptions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered."

2. A title insurer, title agency or title agent issuing a lender's title insurance policy in conjunction with a mortgage loan made simultaneously with the purchase of all or part of the real estate securing the loan, where no owner's title insurance policy has been requested, shall give written notice, on a form prescribed or approved by the director, to the purchaser-mortgagor at the time the commitment is prepared. The notice shall explain that a lender's title insurance policy is to be issued protecting the mortgage-lender, and that the policy does not provide title insurance protection to the purchaser-mortgagor as the owner of the property being purchased. The notice shall explain what a title policy insures against and what possible exposures exist for the purchaser- mortgagor that could be insured against through the purchase of an owner's policy. The notice shall also explain that the purchaser-mortgagor may obtain an owner's title insurance policy protecting the property owner at a specified cost or approximate cost, if the proposed coverages are or amount of insurance is not then known. A copy of the notice, signed by the purchaser-mortgagor, shall be retained in the relevant underwriting file at least fifteen years after the effective date of the policy. 3. Each violation of any provision of this section is a class C violation as that term is defined in section 381.045.]

[381.018. 1. The title insurer shall not allow the issuance of its commitments or policies by a title agency or title agent not affiliated with a title agency unless there is in force a written contract between the parties which sets forth the responsibilities of each party or, where both parties share responsibility for particular functions, specifies the division of responsibilities.

2. For each title agency or title agent not affiliated with a title agency under contract with the insurer, the title insurer shall have on file a statement of financial condition, of each title agency or title agent as of the end of the previous calendar or fiscal year setting forth an income statement of business done during the preceding year and a balance sheet showing the condition of its affairs as of the close of the prior year, certified by the agency or agent as being a true and accurate representation

of the agency's or agent's financial condition. The statement shall be filed with the insurer no later than the date the agency's or agent's federal income tax return for the same year is filed. Attorneys actively engaged in the practice of law, in addition to that related to title insurance business, are exempt from the requirements of this subsection.

3. The title insurer shall conduct reviews of the underwriting, claims and escrow practices of its agencies and agents which shall include a review of the agency's or agent's policy blank inventory and processing operations. If any such title agency or title agent does not maintain separate bank or trust accounts for each title insurer it represents, the title insurer shall verify that the funds held on its behalf are reasonably ascertainable from the books of account and records of the title agency or title agent not affiliated with a title agency. The title insurer shall conduct a review of each of its agencies and agents at least triennially commencing January first of the year first following January 1, 2001.

4. Within thirty days of executing or terminating a contract with a title agency or title agent not affiliated with a title agency, the insurer shall provide notification of the appointment or termination and the reason for termination to the director. Notices of appointment of a title agency or title agent shall be made on a form promulgated by the director.

5. The title insurer shall maintain an inventory of all policy numbers allocated to each title agency or title agent not affiliated with a title agency.

6. The title insurer shall have on file proof that the title agency or title agent is licensed by this state.

7. The title insurer shall establish the underwriting guidelines and, where applicable, limitations on title claims settlement authority to be incorporated into contracts with its title agencies and title agents not affiliated with a title agency.

8. Each violation of any provision of this section is a class B violation as that term is defined in section 381.045.]

[381.022. 1. A title insurer, title agency or title agent not affiliated with a title agency may operate as an escrow, security, settlement or closing agent, provided that:

(1) All funds deposited with the title insurer, title agency or title agent not affiliated with a title agency in connection with any escrow, settlement, closing or security deposit shall be submitted for collection to or deposited in a separate fiduciary trust account or accounts in a qualified depository institution no later than the close of the next business day after receipt, in accordance with the following requirements:

(a) The funds shall be the property of the person or persons entitled to them under the provisions of the escrow, settlement, security deposit or closing agreement and shall be segregated for each depository by escrow, settlement, security deposit or closing in the records of the title insurer, title agency or title agent not affiliated with a title agency, in a manner that permits the funds to be identified on an individual basis and in accordance with the terms of the individual instructions or

16 agreements under which the funds were accepted; and

17 (b) The funds shall be applied only in accordance with the terms of the  
18 individual instructions or agreements under which the funds were accepted;

19 (2) Funds held in an escrow account shall be disbursed only pursuant to a  
20 written instruction or agreement specifying under what conditions and to whom such  
21 funds may be disbursed or pursuant to an order of a court of competent jurisdiction;

22 (3) Funds held in a security deposit account shall be disbursed only pursuant  
23 to a written agreement specifying:

24 (a) What actions the indemnitor shall take to satisfy his or her obligation  
25 under the agreement;

26 (b) The duties of the title insurer, title agency or title agent not affiliated with  
27 a title agency with respect to disposition of the funds held, including a requirement  
28 to maintain evidence of the disposition of the title exception before any balance may  
29 be paid over to the depositing party or his or her designee; and

30 (c) Any other provisions the director may require;

31 (4) Any interest received on funds deposited in connection with any escrow,  
32 settlement, security deposit or closing may be retained by the title insurer, title  
33 agency or title agent not affiliated with a title agency as compensation for  
34 administration of the escrow or security deposit, unless the instructions for the funds  
35 or a governing statute provides otherwise;

36 (5) Each violation of this subsection is a class A violation as that term is  
37 defined in section 381.045.

38 2. The title agency or title agent not affiliated with an agency shall cooperate  
39 with its underwriters in the conduct by the underwriters of reviews of the agency's or  
40 agent's escrow, settlement, closing and security deposit accounts. The title insurer  
41 shall provide a copy of the report of each such review it performs to the director. The  
42 director may promulgate rules setting forth the minimum threshold level at which a  
43 review would be required, the standards thereof and the form of report required.

44 3. If the title agency or title agent not affiliated with an agency is appointed  
45 by two or more title insurers and maintains fiduciary trust accounts in connection  
46 with providing escrow or closing settlement services, the title agency or title agent  
47 shall allow each title insurer reasonable access to the accounts and any or all of the  
48 supporting account information in order to ascertain the safety and security of the  
49 funds held by the title agency or title agent.

50 4. (1) Nothing in this chapter shall be deemed to prohibit the recording of  
51 documents prior to the time funds are available for disbursement with respect to a  
52 transaction in which a title insurer, title agency or title agent not affiliated with a title  
53 agency is the settlement agent, provided all parties to whom payment will become  
54 due upon such recording consent thereto in writing.

55 (2) The settlement agent shall record all deeds and security instruments for  
56 real estate closings handled by it within three business days after completion of all  
57 conditions precedent thereto.

58 (3) Each violation of this subsection is a class C violation as that term is

59 defined in section 381.045.]

60 [381.025. 1. A title insurer, title agency, title agent or other person shall not  
61 give or receive, directly or indirectly, any consideration for the referral of title  
62 insurance business or escrow or other service provided by a title insurer, title agency  
63 or title agent. Each violation of this subsection is a class A violation as that term is  
64 defined in section 381.045.

65 2. Any title insurer, title agency or title agent doing business in the same  
66 county as a title insurer, title agency or title agent who may be in violation of the  
67 prohibitions or limitations of this section shall have standing to seek injunctive relief  
68 against the violating title insurer, title agency or title agent in the event the  
69 department declines or fails to enforce this section within forty-five days following  
70 receipt of written notice of such violation. In any action pursuant to this subsection,  
71 the court may award to the successful party the court costs of the action together with  
72 reasonable attorney fees.]  
73

74 [381.028. No title insurer, title agency or title agent shall participate in any  
75 transaction in which it knows that a producer or other person requires, directly or  
76 indirectly, or through any trustee, director, officer, agent, employee or affiliate, as a  
77 condition, agreement or understanding to selling or furnishing any other person a  
78 loan, or loan extension, credit, sale, property, contract, lease or service, that the other  
79 person shall place a title insurance policy of any kind with the title insurer or through  
80 a particular title agency or agent. Each violation of this section is a class A violation  
81 as that term is defined in section 381.045.]  
82

83 [381.032. 1. No title insurer, may charge any rates regulated by the state  
84 after January 1, 2001, except in accordance with the premium rate schedule and  
85 manual filed with and approved by the director in accordance with applicable statutes  
86 and regulations governing rate filings. Premium rate schedules in effect prior to  
87 January 1, 2001, may be used until new rate schedules have been approved by the  
88 director. Title insurers shall file their premium rate schedules within thirty days after  
89 January 1, 2001. Each violation of this subsection is a class C violation as that term  
90 is defined in section 381.045. Nothing in this section shall prevent an agent not  
91 affiliated with an agency from charging for services that constitute the practice of law  
92 at the customary fee charged by such person for legal services. To the extent the  
93 premium fails to compensate the agent at such rate, the agent may render an  
94 additional bill for such services on behalf of the agent's law practice or law firm. The  
95 acceptance of any part of the premium by the law firm of said agent shall not be a  
96 violation of any provision of the Missouri title insurance act or the general insurance  
97 statutes, regulations or bulletins regarding payment of commissions to nonlicensed  
98 entities.

99 2. The director may establish rules, including rules providing statistical plans,  
100 for use by all title insurers, title agencies and title agents in the recording and  
101 reporting of revenue, loss and expense experience in such form and detail as is

necessary to aid the director in the establishment of rates and fees.

3. The director may require that the information provided pursuant to this section be verified by oath of the insurer's or agency's president or vice president or secretary or actuary, as applicable. The director may further require that the information required pursuant to this section be subject to an audit conducted at the expense of the title insurer or title agency by an independent certified public accountant. The director shall have the authority to establish a minimum threshold level at which an audit would be required.

4. Information filed with the director relating to the experience of a particular agency shall be kept confidential unless the director finds it in the public interest to disclose the information required of title insurers or title agencies pursuant to this section. Prior to any such disclosure of confidential information, the director shall provide notice and opportunity to be heard to the title insurers and title agencies who would be affected thereby.]

[381.035. No title insurance company, title agency or title agent shall willfully withhold information from, or knowingly give false or misleading information to the director, or to any title insurance rating organization, of which the title insurance company is a member or subscriber, which will affect the rates or fees chargeable pursuant to this chapter. Each violation of this section is a class A violation as that term is defined in section 381.045.]

[381.038. 1. Evidence of the examination of title and determination of insurability generated by a title insurer engaged in direct operations, title agency or title agent shall be preserved and maintained by such insurer, agency or agent for as long as appropriate to the circumstances but in no event less than fifteen years after the title insurance policy has been issued.

2. Records relating to escrow and security deposits shall be preserved and retained by a title insurer engaged in direct operations, title agency and title agent for as long as appropriate to the circumstances but in no event less than five years after the escrow or security deposit account has been closed.

3. This section shall not apply to a title insurer acting as coinsurer if one of the other coinsurers has complied with this section.

4. Each violation of any provision of this section is a class C violation as that term is defined in section 381.045.]

[381.042. 1. The director may issue rules, regulations and orders necessary to carry out the provisions of this chapter.

2. No rule or portion of a rule promulgated pursuant to the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.]

[381.045. 1. If the director determines that the title insurer or any other

person has violated this chapter, or any regulation or order promulgated thereunder, after notice and opportunity to be heard, the director may order:

(1) For each violation a monetary penalty which shall take into account the harm the violation caused or could have caused or potential harm to the public and which shall not exceed:

(a) One thousand dollars per violation for a class A violation;

(b) Five hundred dollars per violation for a class B violation; and

(c) One hundred dollars per violation for a class C violation;

(2) Revocation or suspension of the title insurer's license; or

(3) Both monetary penalty and revocation or suspension.

2. Nothing contained in this section shall affect the right of the director to impose any other penalties provided for in the insurance code.

3. Nothing contained in this chapter is intended to or shall in any other manner limit or restrict the rights of policyholders, claimants and creditors.]

[381.048. The director may bring an action in a court of competent jurisdiction to enjoin violations of the Real Estate Settlement Procedures Act, 12 U.S.C. Section 2607, as amended.]

[381.052. No person other than a domestic, foreign or non-United States title insurer organized on the stock plan and duly licensed by the director shall transact title insurance business as an insurer in this state.]

[381.055. Subject to the exceptions and restrictions contained in this chapter, a title insurer shall have the power to:

(1) Do only title insurance business;

(2) Reinsure title insurance policies; and

(3) Perform ancillary activities, unless prohibited by the director, including examining titles to real property and any interest in real property and procuring and furnishing related information and information about relevant personal property, when not in contemplation of, or in conjunction with, the issuance of a title insurance policy.]

[381.058. 1. No insurer that transacts any class, type or kind of business other than title insurance shall be eligible for the issuance or renewal of a license to transact the business of title insurance in this state nor shall title insurance be transacted, underwritten or issued by any insurer transacting or licensed to transact any other class, type or kind of business.

2. A title insurer shall not engage in the business of guaranteeing payment of the principal or the interest of bonds or mortgages.

3. (1) Notwithstanding subsection 1 of this section, and to the extent such coverage is lawful within this state, a title insurer is expressly authorized to issue closing or settlement protection to a proposed insured upon request if the title insurer

issues a commitment, binder or title insurance policy. Such closing or settlement protection shall conform to the terms of coverage and form of instrument as required by the director and may indemnify a proposed insured solely against loss of settlement funds only because of the following acts of a title insurer's named title agency or title agent:

(a) Theft of settlement funds; and  
(b) Failure to comply with written closing instructions by the proposed insured when agreed to by the title agency or title agent relating to title insurance coverage.

(2) The director may promulgate or approve a required charge for providing the coverage.

(3) A title insurer shall not provide any other coverage which purports to indemnify against improper acts or omissions of a person with regard to escrow, settlement, or closing services.]

[381.062. Before being licensed to do an insurance business in this state, a title insurer shall establish and maintain a minimum paid-in capital of not less than four hundred thousand dollars and, in addition, paid-in initial surplus of at least four hundred thousand dollars.]

[381.065. 1. The net retained liability of a title insurer for a single risk in regard to property located in this state, whether assumed directly or as reinsurance, shall not exceed the aggregate of fifty percent of surplus as regards policyholders plus the statutory premium reserve less the company's investment in title plants, all as shown in the most recent annual statement of the insurer on file with the director.

2. For purposes of this chapter:

(1) A single risk shall be the insured amount of any title insurance policy, except that, where two or more title insurance policies are issued simultaneously covering different estates in the same real property, a single risk shall be the sum of the insured amounts of all the title insurance policies; and

(2) A policy under which a claim payment reduces the amount of insurance under one or more other title insurance policies shall be included in computing the single risk sum only to the extent that its amount exceeds the aggregate amount of the policy or policies whose amount of insurance is reduced.

3. A title insurer may obtain reinsurance for all or any part of its liability under its title insurance policies or reinsurance agreements and may also reinsure title insurance policies issued by other title insurers on single risks located in this state or elsewhere. Reinsurance on policies issued on properties located in this state may be obtained from any title insurers licensed to transact title insurance business in this state, any other state, or the District of Columbia and which have a combined capital and surplus of at least eight hundred thousand dollars.

4. The director may waive the limitation of this section for a particular risk upon application of the title insurer and for good cause shown.]



[381.068. In determining the financial condition of a title insurer doing business pursuant to this chapter, the general investment provisions of sections 376.300 to 376.305, RSMo, shall apply; except that, an investment in a title plant or plants in an amount equal to the actual cost shall be allowed as an admitted asset for title insurers. The aggregate amount of the investment shall not exceed fifty percent of surplus to policyholders, as shown on the most recent annual statement of the title insurer on file with the director.]

[381.071. 1. No title insurance policy shall be written unless and until the title insurer, title agent, or agency has:

(1) Caused a search of title to be made from the evidence prepared from a title plant of the county where the property is located as herein defined, or if no such title plant of the county exists, or the owner of such plant refuses to furnish the title insurer, title agent, or agency desiring to insure, such title evidence at a reasonable charge and within a reasonable period of time, then such policy of title insurance shall be based upon the best title evidence available. An attorney licensed to practice law in this state may upon personal inspection use the best evidence available in any county and is not subject to the provisions of the title plant requirement of sections 381.011 to 381.241. The records on which the title plant is based on shall show all prior matters affecting the title to the property or interest therein for a continuous period of time of at least:

- (a) The past ten years, by two years after September 28, 1987;
  - (b) The past fifteen years, by three years after September 28, 1987;
  - (c) The past twenty years, by four years after September 28, 1987; and
  - (d) The past twenty-seven years, by five years after September 28, 1987; and
- (2) Caused to be made a determination of insurability of title in accordance with sound underwriting practices.

2. Except when allowed by regulations promulgated by the director, no title insurer, title agent, or agency shall knowingly issue any owner's title insurance policy or commitment to insure without showing all outstanding, enforceable recorded liens or other interests against the title which is to be insured.

3. Evidence of the examination of title and determination of insurability shall be preserved and retained in the files of the title insurer or its title agent or agency for a period of not less than fifteen years after the title insurance policy has been issued. Instead of retaining the original evidence, the title insurer or title agent or agency may in the regular course of business establish a system whereby all or part of the evidence is recorded, copied, or reproduced by any process that accurately and legibly reproduces or forms a durable medium for reproducing the contents of the original.

4. This section shall not apply to:

- (1) A title insurer assuming liability through a contract of reinsurance;
- (2) A title insurer acting as coinsurer if one of the other coinsuring title

insurers has complied with this section; or

(3) Policies of title insurance issued prior to the expiration of one year after September 28, 1987.]

[381.072. In determining the financial condition of a title insurer doing business pursuant to this chapter, the general provisions of the insurance code requiring the establishment of reserves sufficient to cover all known and unknown liabilities including allocated and unallocated loss adjustment expense, shall apply; except that, a title insurer shall establish and maintain:

(1) (a) A known claim reserve in an amount estimated to be sufficient to cover all unpaid losses, claims and allocated loss adjustment expenses arising under title insurance policies for which the title insurer may be liable, and for which the insurer has discovered or received notice by or on behalf of the insured or escrow or security depositor;

(b) Upon receiving notice from or on behalf of the insured of a title defect in or lien or adverse claim against the title of the insured that may result in a loss or cause expense to be incurred in the proper disposition of the claim, the title insurer shall determine the amount to be added to the reserve, which amount shall reflect a careful estimate of the loss or loss expense likely to result by reason of the claim;

(c) Reserves required pursuant to this section may be revised from time to time and shall be redetermined at least once each year;

(2) A statutory or unearned premium reserve established and maintained as follows:

(a) A domestic title insurer shall establish and maintain an unearned premium reserve computed in accordance with this section, and all sums attributed to such reserve shall at all times and for all purposes be considered and constitute unearned portions of the original premiums. This reserve shall be reported as a liability of the title insurer in its financial statements;

(b) The unearned premium reserve shall be maintained by the title insurer for the protection of holders of title insurance policies. Except as provided in this section, assets equal in value to the reserve are not subject to distribution among creditors or stockholders of the title insurer until all claims of policyholders or claims under reinsurance contracts have been paid in full, and all liability on the policies or reinsurance contracts has been paid in full and discharged or lawfully reinsured;

(c) The unearned premium reserve shall consist of:

a. The amount of the unearned premium reserve on January 1, 2001; and

b. A sum equal to fifteen cents for each one thousand dollars of net retained liability under each title insurance policy, excluding mortgagee's policies simultaneously issued with owner's policies or owner's leasehold policies of the same or greater amount, on a single risk written on properties located in this state and issued after January 1, 2001;

(d) Amounts placed in the unearned premium reserve in any year in accordance with paragraph (c) of this subdivision shall be deducted in determining

the net profit of the title insurer for that year;

(e) A title insurer shall release from the unearned premium reserve a sum equal to ten percent of the amount added to the reserve during a calendar year on July first of each of the five years following the year in which the sum was added, and shall release from the unearned premium reserve a sum equal to three and one-third percent of the amount added to the reserve during that year on each succeeding July first until the entire amount for that year has been released. The amount of the unearned premium reserve or similar unearned premium reserve maintained before January 1, 2001, shall be released in accordance with the law in effect immediately before January 1, 2001;

(f) a. Each domestic and foreign title insurer shall file annually with the audited financial report required pursuant to section 375.1032, RSMo, an actuarial certificate made by a member in good standing of the American Academy of Actuaries, or by an actuary permitted to make such certificate by the commissioner, superintendent or director of the department of insurance of the state of incorporation of a foreign title insurer;

b. The actuarial certification shall conform to the annual statement instructions for title insurers adopted by the National Association of Insurance Commissioners and shall include the actuary's professional opinion of the insurer's reserves as of the date of the annual statement. The reserves analyzed pursuant to this section shall include reserves for known claims, including adverse developments on known claims, and reserves for incurred but not reported claims;

(g) a. Each domestic and foreign title insurer shall establish a supplemental reserve in the amount by which the actuarially certified reserves exceed the total of the known claim reserve and statutory premium reserve as set forth in the title insurer's annual financial report, subject to this subdivision;

b. The supplemental reserve required pursuant to this section shall be phased in as follows:

i. Twenty-five percent of the otherwise applicable supplemental reserve is required until December thirty-first of the year next following January 1, 2001;

ii. Fifty percent of the otherwise applicable supplemental reserve is required until December thirty-first of the second year following January 1, 2001;

iii. Seventy-five percent of the otherwise applicable supplemental reserve is required until December thirty-first of the third year following January 1, 2001;

iv. One hundred percent of the supplemental reserve is required after December thirty-first of the fourth year following January 1, 2001.]

[381.075. 1. Sections 375.570 to 375.750, RSMo, and sections 375.1150 to 375.1246, RSMo, shall apply to all title insurers subject to the title insurance act, except as otherwise provided in this section. In applying such sections, the court shall consider the unique aspects of title insurance and shall have broad authority to fashion relief that provides for the maximum protection of the title insurance policyholders.

2. Security and escrow funds held by or on behalf of the title insurer shall not become general assets and shall be administered as secured claims as defined in section 375.1152, RSMo.

3. Title insurance policies that are in force at the time an order of liquidation is entered shall not be canceled except upon a showing to the court of good cause by the liquidator. The determination of good cause shall be within the discretion of the court. In making this determination, the court shall consider the unique aspects of title insurance and all other relevant circumstances.

4. The court may set appropriate dates that potential claimants must file their claims with the liquidator. The court may set different dates for claims based upon the title insurance policy than for all other claims. In setting dates, the court shall consider the unique aspects of title insurance and all other relevant circumstances.

5. As of the date of the order of insolvency or liquidation, all premiums paid, due or to become due under policies of the title insurers, shall be fully earned. It shall be the obligation of title agencies, title agents, insureds or representatives of the title insurer to pay fully earned premium to the liquidator or rehabilitator.]

[381.078. A title insurer shall only declare or distribute a dividend to shareholders with the prior written approval of the director, as would be permitted pursuant to subdivision (1) of subsection 1 of section 382.210, RSMo.]

[381.085. 1. A title insurer or authorized rate service organization shall not deliver or issue for delivery or permit any of its authorized title agencies or title agents to deliver in this state, any form, in connection with title insurance written, unless it has been filed with the director and approved by the director or thirty days have elapsed and it has not been disapproved as misleading or violative of public policy. Each violation of this subsection is a class C violation as that term is defined in section 381.045.

2. Forms covered by this section shall include:

(1) Title insurance policies, including standard form endorsements; and

(2) Title insurance commitments issued prior to the issuance of a title insurance policy.

3. After notice and opportunity to be heard are given to the insurer or rate service organization which submitted a form for approval, the director may withdraw approval of the form on finding that the use of the form is contrary to the legal requirements applicable at the time of withdrawal. The effective date of withdrawal of approval shall not be less than ninety days after notice of withdrawal is given.

4. Any term or condition related to an insurance coverage provided by an approved title insurance policy or any exception to the coverage, except those ascertained from a search and examination of records relating to a title or inspection or survey of a property to be insured, may only be included in the policy after the term, condition or exception has been filed with the director and approved as herein

provided.]

[381.088. 1. A title insurer may satisfy its obligation to file premium rates, rating manuals and forms as required by this chapter by becoming a member of, or a subscriber to, a rate service organization, organized and licensed pursuant to the provisions of this chapter, where the organization makes the filings, and by authorizing the director in writing to accept the filings on the insurer's behalf.

2. Nothing in this chapter shall be construed as requiring any title insurer, title agency or title agent to become a member of, or a subscriber to, any rate service organization. Nothing in this chapter shall be construed as prohibiting the filing of deviations from rate service organization filings by any member or subscriber.]

[381.092. 1. Every title insurer that shall propose its own premium rates and every title insurance rating organization shall propose premium rates that are not excessive nor inadequate for the safety and soundness of any title insurer, which do not unfairly discriminate between risks in this state which involve essentially the same exposure to loss and expense elements, and which shall give due consideration to the following matters:

(1) The desirability for stability and responsiveness of rate structures;

(2) The necessity of assuring the financial solvency of title insurance companies in periods of economic depression;

(3) The necessity for paying dividends on the capital stock of title insurance companies sufficient to induce capital to be invested therein; and

(4) A reasonable level of profit for the insurer.

2. Every title insurer that shall propose its own rates and every title insurance rating organization may adopt basic classifications of policies or contracts of title insurance which shall be used as the basis for rates.]

[381.095. 1. If the director shall find in his review of rate filings that the filings provide for, result in, or produce rates that are not unreasonably high, and are not inadequate for the safeness and soundness of the insurer, and are not unfairly discriminatory between risks in this state involving essentially the same hazards and expense elements, the director shall approve such rates. Prior to such approval the director may conduct a public hearing with respect to a rate filing. An approval shall continue in effect until the director shall issue an order of disapproval pursuant to the requirements and procedure provided for in subsections 2 and 3 of this section.

2. Upon the review at any time by the director of a rate filing, the director shall, before issuing an order of disapproval, hold a hearing upon not less than ten days' written notice, specifying in reasonable detail the matters to be considered at such hearing, to every title insurer and title insurance rating organization which made such filing, and if, after such hearing, the director finds that such filing or a part thereof does not meet the requirements of this chapter, the director shall issue an order specifying in what respects the director finds that it so fails, and stating when,

within a reasonable period thereafter, such filing or a part thereof shall be deemed no longer effective. A title insurer or title insurance rating organization shall have the right at any time to withdraw a filing or a part thereof, subject to the provisions of section 381.102, in the case of deviation filing. Copies of the order shall be sent to every title insurer and title insurance rating organization affected. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

3. Any person or organization aggrieved with respect to any filing which is in effect may make written application to the director for a hearing thereon. The title insurance company or title insurance rating organization that made the filing shall not be authorized to proceed pursuant to this subsection. Such application shall specify in reasonable detail the grounds to be relied upon by the applicant. If the director shall find that the application is made in good faith, that the applicant would be so aggrieved if his or her grounds are established, and that such grounds otherwise justify holding such a hearing, the director shall, within thirty days after receipt of such application, hold a hearing upon not less than ten days' written notice to the applicant and to every title insurance company and title insurance rating organization which made such a filing. If, after such hearing, the director finds that the filing or a part thereof does not meet the requirements of this chapter, the director shall issue an order specifying in what respects the director finds that such filing or a part thereof fails to meet the requirements of this chapter, stating when within a reasonable period thereafter, such filing or a part thereof shall be deemed no longer effective. Copies of such order shall be sent to the applicant and to every such title insurer and title insurance rating organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.]

[381.098. 1. A corporation, an unincorporated association, a partnership or an individual, whether located within or outside this state, may make application to the director for license as a rating organization for title insurers, and shall file therewith:

(1) A copy of its constitution, its articles of agreement or association or its certificate of incorporation, and of its bylaws, rules and regulations governing the conduct of its business;

(2) A list of its members and subscribers;

(3) The name and address of a resident of this state upon whom notices or orders of the director or process affecting such rating organization may be served; and

(4) A statement of its qualifications as a title insurance rating organization.

2. If the director finds that the applicant is competent, trustworthy and otherwise qualified to act as a rating organization, and that its constitution, articles of agreement or association or certificate of incorporation, and its bylaws, rules and

regulations governing the conduct of its business, conform to requirements of law, the director shall issue a license authorizing the applicant to act as a rating organization for title insurance. Licenses issued pursuant to this section shall remain in effect for three years unless sooner suspended or revoked by the director or withdrawn by the licensee. The fee for such license shall be one thousand five hundred dollars. Licenses issued pursuant to this section may be suspended or revoked by the director, after hearing upon notice, in the event the rating organization ceases to meet the requirements of this subsection. Every rating organization shall notify the director promptly of every change in:

(1) Its constitution, its articles of agreement or association or its certificate of incorporation, and its bylaws, rules and regulations governing the conduct of its business;

(2) Its list of members and subscribers; and

(3) The name and address of the resident of this state designated by it upon whom notices or orders of the director or process affecting such rating organization may be served.

3. Subject to rules and regulations which have been approved by the director as reasonable, each title insurance rating organization shall permit any title insurance company not a member to be a subscriber to its rating services. Notices of proposed changes in such rules and regulations shall be given to subscribers. Each such rating organization shall furnish its rating services without discrimination to its members and subscribers. The reasonableness of any rule or regulation in its application to subscribers, or the refusal of any such rating organization to admit a title insurance company as a subscriber, shall at the request of any subscriber or any such title insurance company, be reviewed by the director at a hearing held upon at least ten days' written notice to such rating organization and to such subscriber. If the director finds that such rule or regulation is unreasonable in its application to subscribers, the director shall order that such rule or regulation shall not be applicable to subscribers. If the rating organization fails to grant or reject an application of a title insurance company for subscribership within thirty days after it was made, the title insurance company may request a review by the director as if the application had been rejected. If the director finds that the title insurance company has been refused admittance to the title insurance rating organization as a subscriber without justification, the director shall order such rating organization to admit the title insurance company as a subscriber. If the director finds that the action of the title insurance rating organization was justified, the director shall make an order affirming its action.]

[381.102. Every member of or subscriber to a title insurance rating organization shall adhere to the filings made on its behalf by such organization, except that any title insurance company which is a member of or subscriber to such a rating organization may file with the director a uniform percentage of decrease or increase to be applied to any or all elements of the fees produced by the rating system so filed for a class of title insurance which is found by the director to be a proper

rating unit for the application of such uniform decrease or increase, or to be applied to the rates for a particular area, or otherwise deviate from the rating plans, policy forms or other matters which are the subject of filings pursuant to this chapter. Such deviation filing shall specify the basis for the modification and shall be accompanied by the data or historical pattern upon which the applicant relies. A copy of the deviation filing and data shall be sent simultaneously to such rating organization. Deviation filings shall be subject to the provisions of section 381.095.]

[381.105. 1. Any member of or subscriber to a title insurance rating organization may appeal to the director from any action or decision of such rating organization in approving or rejecting any proposed change in or addition to the filings of such rating organization, and the director shall, after a hearing held upon not less than ten days' written notice to the appellant and to such rating organization, issue an order approving the action or decision of such rating organization or directing it to give further consideration to such proposal and to take action or make a decision upon it within thirty days. If such appeal is from the action or decision of the title insurance rating organization in rejecting a proposed addition to its filings, the director may, in the event the director finds that such action or decision was unreasonable, issue an order directing the rating organization to make an addition to its filings, on behalf of its members and subscribers, in a manner consistent with the director's findings, within a reasonable time after the issuance of such order. If the appeal is from the action of the title insurance rating organization with regard to a rate or a proposed change in or addition to its filings relating to the character and extent of coverage, the director shall approve the action of the rating organization or such modification thereof as shall have been suggested by the appellant if either be made in accordance with this chapter.

2. The failure of a title insurance rating organization to take action or make a decision within thirty days after submission to it of a proposal pursuant to this section shall constitute a rejection of such proposal within the meaning of this section. If such appeal is based upon the failure of the rating organization to make a filing on behalf of such member or subscriber which is based on a system of expense allocation which differs from the system of expense allocation included in a filing made by such rating organization, the director shall, if the director grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding such appeal, the director shall apply the standards set forth in section 381.032.]

[381.108. 1. The director shall promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with the department, which may be modified from time to time, and which shall be used thereafter by each title insurer in the recording and reporting of the composition of its business, its loss and countrywide expense experience and those of its title insurance underwriters in order that the experience of all title insurers may be made available, at least annually,



575 in such form and detail as may be necessary to aid him or her in determining whether  
576 rating systems comply with the standards set forth in this chapter. Such rules and  
577 plans may also provide for the recording of expense experience items which are  
578 specially applicable to this state and are not susceptible of determination by a  
579 prorating of countrywide expense experience. In promulgating such rules and plans,  
580 the director shall give due consideration to the rating systems on file with the  
581 department, and in order that such rules and plans may be as uniform as is practicable  
582 among the several states, to the rules and to the form of the plans used for such rating  
583 systems in other states. Such rules and plans shall not place an unreasonable burden  
584 of expense on any title insurer. No title insurer shall be required to record or report  
585 its expense and loss experience on a classification basis that is inconsistent with the  
586 rating system filed by it, nor shall any title insurer be required to report the  
587 experience to any agency of which it is not a member or subscriber. The director  
588 may designate one or more rating organizations or other agencies to assist the  
589 director in gathering such experience and making compilations thereof, and such  
590 compilations shall be made available, subject to reasonable rules promulgated by the  
591 director, to title insurers and rating organizations. The director shall give preference  
592 in such designation to entities organized by and functioning on behalf of title insurers  
593 operating in this state. If the director, in his or her judgment, determines that one or  
594 more of such organizations designated as statistical agents is unable or unwilling to  
595 perform its statistical functions according to reasonable requirements established  
596 from time to time by the director, he or she may, after consultation with such  
597 statistical agent and upon twenty days' notice to any affected companies, designate  
598 another person to act on the director's behalf in the gathering of statistical experience.  
599 The director shall in such case establish the fee to be paid to such designated person  
600 by the affected companies in order to pay the total cost of gathering and compiling  
601 such experience. Agencies designated by the director shall assist the director in  
602 making compilations of the reported data and such compilations shall be made  
603 available, subject to reasonable rules and regulations promulgated by the director, to  
604 insurers, rating organizations and any other interested parties.

605 2. Reasonable rules and plans may be promulgated by the director for the  
606 interchange of data necessary for the application of rating plans.

607 3. In order to further uniform administration of rate regulatory laws, the  
608 director and every title insurer and rating organization may exchange information and  
609 experience data with insurance supervisory officials, title insurers and rating  
610 organizations in other states, and may consult with them with respect to rate making  
611 and the application of rating systems.

612 4. No rule or portion of a rule promulgated pursuant to the authority of this  
613 section shall become effective unless it has been promulgated pursuant to the  
614 provisions of chapter 536, RSMo.]

615  
616 [381.112. For purposes of the premium tax imposed by sections 148.320 and  
617 148.340, RSMo, the premium income received by a title insurer shall mean the

amount of premium actually remitted to the title insurer and shall exclude any amount of premium retained by the title agent within the definition of "premium" contained in section 381.009.]

[381.115. 1. A person shall not act in the capacity of a title agency or title agent and a title insurer may not contract with any person to act in the capacity of a title agency or title agent with respect to risks located in this state unless the person is a licensed title agency or title agent in this state.

2. An individual employed by a licensed title agency or title agent to whom the agency or agent delegates authority to act on that agency's or agent's behalf shall be either individually licensed or be named on the employing agent's license if such employee performs any of the functions defined in paragraph (a) of subdivision (25) of section 381.009. Each person named on the license shall possess all qualifications determined by the director to be appropriate. The director may adopt rules, regulations, and requirements relating to licensing and practices of persons acting in the capacity of title agencies or agents. These persons may include title agencies, title agents, employees of either, and persons acting on behalf of title agencies or title agents. This subsection is not intended to include persons performing clerical functions.

3. Every title agency licensed in this state shall:

(1) Exclude or eliminate the word insurer or underwriter from its business name, unless the word agency is also included as part of the name; and

(2) Provide, in a timely fashion, each title insurer with which it places business any information the title insurer requests in order to comply with reporting requirements of the director.

4. A title agency or title agent licensed in this state prior to the effective date of this chapter shall have ninety days after the effective date of this chapter to comply with the requirements of this section.

5. If the title agency or title agent delegates the title search to a third party, such as an abstract company, the agency or agent must first obtain proof that the third party is operating in compliance with rules and regulations established by the director and the third party shall provide the agency or agent and the insurer with access to and the right to copy all accounts and records maintained by the third party with respect to business placed with the title insurer. Proof from the third party may consist of a signed statement indicating compliance, and shall be effective for a three-year period. Each violation of this subsection is a class C violation as that term is defined in section 381.045.]

[381.118. 1. Each title agent licensed to sell title insurance in this state, unless exempt pursuant to subsection 8 of this section, shall successfully complete courses of study as required by this section. Any person licensed to act as a title agent shall, during each two years, attend courses or programs of instruction or attend seminars equivalent to a minimum of eight hours of instruction. The initial such two-year period shall begin January first of the year next following the effective date

of this chapter.

2. Subject to approval by the director, the courses or programs of instruction which shall be deemed to meet the director's standards for continuing educational requirements shall include, but not be limited to, the following:

(1) An insurance-related course taught by an accredited college or university or qualified instructor who has taught a course of insurance law at such institution;

(2) A course or program of instruction or seminar developed or sponsored by any authorized insurer, recognized agents' association or insurance trade association. A local agents' group may also be approved if the instructor receives no compensation for services;

(3) Courses approved for continuing legal education credit by the Missouri Bar.

3. A person teaching any approved course of instruction or lecturing at any approved seminar shall qualify for the same number of classroom hours as would be granted to a person taking and successfully completing such course, seminar or program.

4. Excess classroom hours accumulated during any two-year period may be carried forward to the two-year period immediately following the two- year period in which the course, program or seminar was held.

5. For good cause shown, the director may grant an extension of time during which the educational requirements imposed by this section may be completed, but such extension of time shall not exceed the period of one calendar year. The director may grant an individual waiver of the mandatory continuing education requirement upon a showing by the licensee that it is not feasible for the licensee to satisfy the requirements prior to the renewal date. Waivers may be granted for reasons including, but not limited to:

(1) Serious physical injury or illness;

(2) Active duty in the armed services for an extended period of time;

(3) Residence outside the United States; or

(4) Licensee is at least seventy years of age and is currently licensed as a title agent.

6. Every person subject to the provisions of this section shall furnish in a form satisfactory to the director, written certification as to the courses, programs, or seminars of instruction taken and successfully completed by such person. A filing fee shall be paid by the person furnishing the report as determined by the director to be necessary to cover the administrative cost related to the handling of such certification reports, subject to the limitations imposed in subsection 9 of this section.

7. The provisions of this section shall not apply to those natural persons holding or applying for a license to act as a title agent in Missouri who reside in a state that has enacted and implemented a mandatory continuing education law or regulation pertaining to title agents. However, those natural persons holding or applying for a Missouri agent license who reside in states which have no mandatory

continuing education law or regulations shall be subject to all the provisions of this section to the same extent as resident Missouri title agents.

8. Rules necessary to implement and administer this section shall be promulgated by the director of the department of insurance, including, but not limited to, rules regarding the following:

(1) The insurance advisory board established by section 375.019, RSMo, shall be utilized by the director to assist the director in determining acceptable content of courses, programs and seminars to include classroom equivalency;

(2) Every applicant seeking approval by the director of a continuing education course pursuant to this section shall pay to the director a filing fee of fifty dollars per course, except that such total fee shall not exceed two hundred fifty dollars per year for any single applicant. Fees shall be waived for local agents' groups if the instructor receives no compensation for services. Such fee shall accompany any application form required by the director. Courses shall be approved for a period of no more than one year. Applicants holding courses intended to be offered for a longer period must reapply for approval;

(3) The director has the authority to determine the amount of the filing fee to be paid by title agents at the time of license renewal, which shall be set at an amount to produce revenue which shall not substantially exceed the cost of administering this section, but in no event shall such fee exceed ten dollars per biennial report filed. 9. All funds received pursuant to the provisions of this section shall be transmitted by the director of the department of insurance to the department of revenue for deposit in the state treasury to the credit of the department of insurance dedicated fund. All expenditures necessitated by this section shall be paid from funds appropriated from the department of insurance dedicated fund by the legislature.

10. When a title agent pays his or her biennial renewal fee, such agent shall also furnish the written certification and filing fee required by this section.

11. No rule or portion of a rule promulgated pursuant to the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo.]

[381.122. The director may during normal business hours examine, audit and inspect any and all books and records maintained by a title agency pursuant to this chapter.]

[381.125. 1. Whenever the business to be written constitutes affiliated business, prior to commencing the transaction, the title agency or title agent shall ensure that its customer has been provided with disclosure of the existence of the affiliated business arrangement and a written estimate of the charge or range of charges generally made for the title services provided by the title agency or agent.

2. The director may establish rules for use by all title agencies in the recording and reporting of the agency's owners and of the agency's ownership

interests in other persons or businesses and of material transactions between the parties.

3. The director may require each title agency to file on forms prescribed by the director reports setting forth the names and addresses of those persons, if any, that have a financial interest in the agency and who the agency knows or has reason to believe are producers of title insurance business or associates of producers.

4. Nothing in this chapter shall be construed as prohibiting affiliated business arrangements in the provision of title insurance business so long as:

(1) The title agency, title agent or party making a referral constituting affiliated business, at or prior to the time of the referral, discloses the arrangement and, in connection with the referral, provides the person being referred with a written estimate of the charge or range of charges likely to be assessed and otherwise complies with the disclosure obligations of this section;

(2) The person being referred is not required to use a specified title insurance agency, agent or insurer; and

(3) The only thing of value that is received by the title agency, title agent or party making the referral, other than payments otherwise permitted, is a return on an ownership interest.

For purposes of this subsection, the terms "required use" and "return on an ownership interest" shall have the meaning accorded to them under the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. Section 2607, as amended and Regulation X, 24 CFR Section 3500, et seq.

5. Each violation of any provision of this section is a class C violation as that term is defined in section 381.045.]

[381.410. As used in this section and section 381.412, the following terms mean:

(1) "Cashier's check", a check, however labeled, drawn on the financial institution, which is signed only by an officer or employee of such institution, is a direct obligation of such institution, and is provided to a customer of such institution or acquired from such institution for remittance purposes;

(2) "Certified funds", United States currency, funds conveyed by a cashier's check, certified check, teller's check, as defined in Federal Reserve Regulations CC, or wire transfers, including written advice from a financial institution that collected funds have been credited to the settlement agent's account;

(3) "Director", the director of the department of insurance, unless the settlement agent's primary regulator is another division in the department of economic development. When the settlement agent is regulated by such division, that division shall have jurisdiction over this section and section 381.412;

(4) "Financial institution":

(a) A person or entity doing business pursuant to the laws of this state or the United States relating to banks, trust companies, savings and loan associations or credit unions; or

(b) The following persons or entities if their principal place of business is in Missouri or outside Missouri, but within the St. Louis or Kansas City standard metropolitan statistical area:

a. A mortgage loan company which is subject to licensing, supervision or auditing by the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or the United States Veterans Administration, or the Government National Mortgage Association, or the United States Department of Housing and Urban Development, or a successor of any of the foregoing agencies or entities, as an approved seller or servicer;

(5) "Settlement agent", a person, corporation, partnership, or other business organization which accepts funds and documents as fiduciary for the buyer, seller or lender for the purposes of closing a sale of an interest in real estate located within the state of Missouri, and is not a financial institution, or a member in good standing of the Missouri Bar , or a person licensed under chapter 339, RSMo.]

[381.412. 1. A settlement agent who accepts funds of more than ten thousand dollars for closing a sale of an interest in real estate shall require a buyer, seller or lender who is not a financial institution to convey such funds to the settlement agent as certified funds. A check:

(1) Drawn on an escrow account of a licensed real estate broker, as regulated and described in section 339.105, RSMo;

(2) Drawn on an escrow account of a title insurer or title insurance agency licensed to do business in Missouri;

(3) Drawn on an agency of the United States of America, the state of Missouri or any county or municipality of the state of Missouri; or

(4) Drawn on an account by a financial institution;

shall be exempt from the provisions of this section.

2. No title insurer, title insurance agency or title insurance agent, as defined in section 381.009, shall make any payment, disbursement or withdrawal in excess of ten thousand dollars from an escrow account which it maintains as a depository of funds received from the public for the settlement of real estate transactions unless a corresponding deposit of funds was made to the escrow account for the benefit of the payee or payees:

(1) At least ten days prior to such payment, disbursement or withdrawal;

(2) Which consisted of certified funds; or

(3) Consisted of a check made exempt from this section by the provisions of subsection 1 of this section.

3. If the director finds that a settlement agent, title insurer, title insurance agency or title insurance agent has violated any provisions of this section, the director may assess a fine of not more than two thousand dollars for each violation, plus the costs of the investigation. Each separate transaction where certified funds are required shall constitute a separate violation. In determining a fine, the director shall

833 consider the extent to which the violation was a knowing and willful violation, the  
834 corrective action taken by the settlement agent to ensure that the violation will not  
835 be repeated, and the record of the settlement agent in complying with the provisions  
836 of this section.]